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JUSTICES OF THE PEACE REVIEW COUNCIL

ONTARIO

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The Honourable Annemarie E. Bonkalo

CHIEF JUSTICE

ONTARIO COURT OF JUSTICE

Chair, Justices of the Peace Review Council

JUSTICES OF THE PEACE REVIEW COUNCIL

December 3, 2014

The Honourable Madeleine Meilleur
Attorney General for the Province of Ontario
720 Bay Street, 11th Floor
Toronto, Ontario
M5G 2K1

Dear Minister:

It is my pleasure to submit the Seventh Annual Report of the Justices of the Peace Review Council concerning its operations throughout 2013, in accordance with subsection 9(7) of the *Justices of the Peace Act*.

The period of time covered by this Annual Report is from January 1, 2013 to December 31, 2013.

Respectfully submitted,

Annemarie E. Bonkalo

Annemarie E. Bonkalo
Chief Justice
Ontario Court of Justice

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INTRODUCTION

The period of time covered by this Annual Report is from January 1, 2013 to December 31, 2013. This report is the Seventh Annual Report on the work of the Justices of the Peace Review Council.

The Justices of the Peace Review Council is an independent body established by the Province of Ontario under the *Justices of the Peace Act* with a mandate to receive and investigate complaints about justices of the peace and to fulfill other functions as described in this report. The Review Council does not have the power to interfere with or change a decision made by a justice of the peace. Those are matters to be pursued through other legal remedies before the courts.

The *Act* provides for the Council to make an Annual Report to the Attorney General on its affairs, including case summaries about complaints. The report may not include information that identifies a justice of the peace, a complainant or a witness unless a public hearing has occurred.

This Seventh Annual Report of the Review Council provides information on its membership, its functions and the work of the Council during 2013. The Annual Report also includes information on the procedures used to address complaints. Information is also included on applications for approval to engage in extra-remunerative activities, although names of applicants are confidential.

Justices of the peace play an important role in the administration of justice in Ontario. They are appointed by the Province of Ontario and have their duties assigned by a Regional Senior Justice or a Regional Senior Justice of the Peace. They routinely conduct trials under the *Provincial Offences Act* and preside over bail hearings. They also perform a number of other judicial functions, such as issuing search warrants. Justices of the peace do difficult, important work in the justice system. A justice of the peace may be the only judicial officer that a citizen will encounter in his or her lifetime.

The Review Council had jurisdiction over approximately 401 provincially-appointed justices of the peace, full-time and part-time and *per diem*, during the period of time covered by this Annual Report. In 2013, they presided over millions of provincial offences matters, such as traffic tickets, as well as bail hearings, Intake Court and assignment courts. During 2013, the Council received 51 new complaints about justices of the peace, and carried over 24 from previous years. Information about the 36 files where the complaint files were completed and closed in 2013 is included in this Report. Public hearings held by the Review Council during the hearing are contained in the Appendices. We invite you to find out more about the Review Council by reading this Annual Report, and by visiting its website at **www.ontariocourts.on.ca/jprc/en/.** On the website, you will find the Council's current policies and procedures; updates about any public hearings that are in progress or that have been completed after this Report was prepared; the *Principles of Judicial Office;* the Education Plan; and links to the governing legislation.

1. COMPOSITION AND TERMS OF APPOINTMENT

The Justices of the Peace Review Council is an independent body established under the *Justices of the Peace Act*. The Review Council has a number of functions which are described in this section, including the review and investigation of complaints about the conduct of justices of the peace.

The Review Council includes judges, justices of the peace, a lawyer and four community representatives:

- the Chief Justice of the Ontario Court of Justice, or another judge of the Ontario Court of Justice designated by the Chief Justice;
- the Associate Chief Justice Co-ordinator of Justices of the Peace;
- three justices of the peace appointed by the Chief Justice of the Ontario Court of Justice;
- two judges of the Ontario Court of Justice appointed by the Chief Justice of the Ontario Court of Justice;
- one regional senior justice of the peace appointed by the Chief Justice of the Ontario Court of Justice;
- a lawyer appointed by the Attorney General from a list of three names submitted to the Attorney General by the Law Society of Upper Canada; and,
- four persons appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General.

In the appointment of community members, the importance is recognized of reflecting, in the composition of the Review Council as a whole, Ontario's linguistic duality and the diversity of its population and ensuring overall gender balance.

The lawyer and community members who are appointed to the Council hold office for four-year terms and are eligible for reappointment. Judicial members on the Council are appointed by the Chief Justice of the Ontario Court of Justice.

2. MEMBERS

The membership of the Review Council in the year covered by this report (January 1, 2013 to December 31, 2013) was as follows:

Judicial Members:

CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

The Honourable Annemarie E. Bonkalo .... (Toronto)

ASSOCIATE CHIEF JUSTICE CO-ORDINATOR OF JUSTICES OF THE PEACE OF THE ONTARIO COURT OF JUSTICE

The Honourable John A. Payne ....(Durham/Toronto)
(Until September 1, 2013)

ASSOCIATE CHIEF JUSTICE CO-ORDINATOR OF JUSTICES OF THE PEACE OF THE ONTARIO COURT OF JUSTICE

The Honourable Faith Finnestad .... (Toronto)
(Effective September 2, 2013)

THREE JUSTICES OF THE PEACE APPOINTED BY THE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE:

His Worship Maurice Hudson ....(Brampton)
His Worship Warren Ralph .... (Toronto)
Her Worship Louise Rozon... (Cornwall)
(Until December 17, 2013)

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TWO JUDGES OF THE ONTARIO COURT OF JUSTICE APPOINTED BY THE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE:

The Honourable Justice Esther Rosenberg ....(Peterborough)

The Honourable Justice Charles H. Vaillancourt .... (Toronto)

REGIONAL SENIOR JUSTICE OF THE PEACE APPOINTED BY THE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE:

Regional Senior Justice of the Peace Kathleen M. Bryant .... (Sault Ste. Marie)

Lawyer Member:

Ms. S. Margot Blight .... (Toronto)
Borden Ladner Gervais LLP

(Re-appointed effective June 13, 2013 for four years)

Community Members:

Dr. Emir Crowne .... (Windsor)
Associate Professor, Faculty of Law, University of Windsor

Ms. Cherie A. Daniel .... (Toronto)
Lawyer

Dr. Michael S. Phillips ....(Gormley)
Consultant, Mental Health and Justice

Mr. Steven G. Silver ....(Gananoque)
Retired, Chief Administrative Officer, United Counties of Leeds & Grenville

(Until May 1, 2013)

Ms. Leonore Foster .... (Kingston)
Former Councillor of the City of Kingston

(Effective May 29, 2013)

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Members – Temporary:

Subsection 8(10) of the *Justices of the Peace Act* permits the Chief Justice of the Ontario Court of Justice to appoint a judge or a justice of the peace to be a temporary member of the Justices of the Peace Review Council of a complaints committee or hearing panel where it is necessary in order to meet the requirements of the *Act*. During the period covered by this report, the following members were temporary members:

The Honourable Justice P.H. Marjoh Agro	(Hamilton)
The Honourable Justice Ralph Carr	(Timmins)
The Honourable Justice Guy F. DeMarco	(Windsor)
Regional Senior Justice of the Peace Bruce Leaman	(Thunder Bay)
The Honourable Justice Deborah K. Livingstone	(London)
The Honourable Justice John Payne	(Cobourg)
Her Worship Louise Rozon	(Cornwall)
The Honourable Justice Paul M. Taylor	(Toronto)

3. ADMINISTRATIVE INFORMATION

Office space in downtown Toronto is shared by both the Ontario Judicial Council and the Justices of the Peace Review Council. The Councils make use of financial, human resources, and technology support staff in the Office of the Chief Justice, as needed, and computer systems without the need of acquiring a large staff.

Councils' offices are used for meetings of both Councils and their members, and as needed for meetings with judicial officers that may result as part of the disposition of complaints. The Councils have a shared telephone reception and fax number. They share a toll-free number for the use of members of the public across the province of Ontario and a toll-free number for persons using TTY/teletypewriter machines.

During the period covered by this report, the staff of the Ontario Judicial Council and the Justices of the Peace Review Council consisted of a Registrar, two Assistant Registrars and an Administrative Secretary:

Ms. Marilyn E. King, LL.B. – *Registrar*

Mr. Thomas A. Glassford – *Assistant Registrar*

Ms. Ana M. Brigido – *Assistant Registrar*

Ms. Janice Cheong – *Administrative Secretary*

4. FUNCTIONS OF THE REVIEW COUNCIL

The *Justices of the Peace Act* provides that the functions of the Review Council are:

- to establish complaints committees from amongst its members to receive and investigate complaints about justices of the peace, and decide upon dispositions under section 11(15);
- to hold hearings under section 11.1 when hearings are ordered by complaints committees pursuant to section 11(15);
- to review and approve standards of conduct;
- to consider applications under section 5.2 for the accommodation of needs;
- to deal with continuing education plans; and,
- to decide whether a justice of the peace who applies for approval to engage in other remunerative work may do so.

The Review Council does not have the power to interfere with or change a decision made by a justice of the peace. If a person believes that a justice of the peace made an error in assessing evidence or in making a decision on any of the issues, the proper way to proceed is through other legal remedies before the courts, such as an appeal.

Under section 10(1) of the *Justices of the Peace Act*, the Review Council may establish rules of procedure for complaints committees and for hearing panels and the Review Council must make the rules available to the public. The Review Council has established

Procedures containing rules for the complaints process which are posted on its website at the link for "Policies and Procedures" at:
www.ontariocourts.ca/ocj/jprc/policies-and-procedures/procedure/.

During 2013, the Council continued to refine and develop its Procedures and policies.

Recognizing its nature as an independent body, the Review Council decided that it would use independent reporting services at its hearings who were external to the Ministry of the Attorney General. This provides for certification of the accuracy of the transcripts while respecting the independent nature of the Review Council.

Taking into account the use of technology that is prevalent today, the Review Council adopted a Protocol Regarding the Use of Electronic Communication Devices in JPRC Hearings modelled after the protocol that was established by the Ontario Court of Justice, with revisions reflecting the JPRC processes. The Protocol is posted on the Review Council's website under the link
www.ontariocourts.ca/ocj/jprc/policies-and-procedures/electronic-communication/.

A copy of the Council's current procedures for the complaints process that incorporates the amendments made during 2013 is posted on the Review Council's website under the link "Policies and Procedures"
www.ontariocourts.ca/ocj/jprc/policies-and-procedures/ procedure/.

5. EDUCATION PLAN

The Associate Chief Justice Co-ordinator of Justices of the Peace of the Ontario Court of Justice is required, by section 14 of the *Justices of the Peace Act,* to establish, implement and make public a plan for the continuing judicial education of justices of the peace. The education plan must be approved by the Justices of the Peace Review Council. In 2007, a continuing education plan was developed by the Associate Chief Justice Co-ordinator of Justices of the Peace in conjunction with the Advisory Committee on Education. The Committee includes the Associate Chief Justice Co-ordinator of Justices of the Peace as Chair *(ex officio)* and justices of the peace nominated by the Associate Chief Justice Coordinator of Justices of the Peace and by the Association of Justices of the Peace of Ontario. The continuing education plan was revised and approved by the Justices of the Peace Review Council on November 28, 2008. In 2012, the Council was informed by the

Associate Chief Justice-Coordinator of Justices of the Peace that the Court had retained Ms. Susan Lightstone to do a review of justice of the peace education programs and provide the Court with a report on judicial education. Ms. Lightstone has worked with the National Judicial Institute which provides education for federally appointed judges across the country. In 2013, the Council was informed that Ms. Susan Lightstone had been retained for a further three years, working with a team to review all education programs for justices of the peace.

In 2013, the Council was presented with the Continuing Education Plan in which seven weeks of Intensive Workshops had been expanded to nine and a half weeks under the guidance and advice of Ms. Lightstone, including additional training on Provincial Offences Act trials and a half week wrap-up course two years after appointment, and a new program on Good Judgment. The proposed Education Plan was approved by the Justices of the Peace Executive Committee (JPEC) on April 23, 2013 and was approved by the Council on May 28, 2013.

A copy of the Continuing Education Plan can be found on the Council's website under the link "Education Plan" at **www.ontariocourts.ca/ocj/jprc/education-plan/**.

6. STANDARDS OF CONDUCT

The Associate Chief Justice Co-ordinator of Justices of the Peace may, under section 13(1) of the *Justices of the Peace Act,* establish standards of conduct for justices of the peace and a plan for bringing the standards into effect and must implement the standards and plan when they have been reviewed and approved by the Review Council.

The *Principles of Judicial Office for Justices of the Peace of the Ontario Court of Justice* were approved by the Justices of the Peace Review Council on December 7, 2007. The principles set out standards of excellence and integrity to which justices of the peace subscribe. These principles are not exhaustive. Intended to assist justices of the peace in addressing ethical and professional dilemmas, they may also serve in assisting the public to understand the reasonable expectations which the public may have of justices of the peace in the performance of judicial duties and in their conduct generally. The principles are designed to be advisory in nature and are not directly related to any specific disciplinary process.

A copy of the *Principles of Judicial Office for Justices of the Peace of the Ontario Court of Justice* is included as Appendix C in this Annual Report and can be found on the Council's website under the link for "Principles of Judicial Office" at: **www.ontariocourts.ca/ocj/jprc/principles-of-judicial-office/**.

7. EXTRA-REMUNERATIVE WORK

Under section 19 of the *Justices of the Peace Act,* all justices of the peace are required to seek the written approval of the Review Council before accepting or engaging in any extra-remunerative work. In 1997, the former Justices of the Peace Review Council approved a policy regarding extra-remunerative work in which justices of the peace may engage. On November 23, 2007, the newly constituted Review Council approved the policy regarding other remunerative work.

Applications received from justices of the peace to engage in other remunerative work are considered in accordance with the Council's policy. The policy applies to all justices of the peace, full-time and part-time and *per diem*. The policy sets out criteria that are used in assessing applications including:

- whether there is an actual, or perceived, conflict of interest between the duties as assigned and the extra-remunerative activity for which approval is sought;
- whether the nature of the activity for which the justice of the peace seeks approval will present an intrusive demand on the time, availability or energy of the justice of the peace and his or her ability to properly perform the judicial duties assigned; and,
- whether the activity for which the justice of the peace seeks approval is a seemly or appropriate activity in which a judicial officer should engage, having regard to the public perceptions of judicial demeanour, independence and impartiality.

In 2010, the Council determined that in considering applications to engage in extra-remunerative work, it would look at two aspects in relation to remuneration associated with the work. Firstly, the Council considers whether the work gives rise to any remuneration to the applicant justice of the peace. Secondly, the Council considers that a justice of the peace is engaged in extra-remunerative work when that justice of the peace is a party to someone else's remunerative work. Once the Council has established whether there is any remuneration, the policy and criteria set out in the Council's extra-remunerative policy are considered. The *Policy of the Justices of the Peace Review Council Re Extra-Remunerative Work* was amended to reflect the Council's decision.

One criterion to be considered by the Council in considering applications is whether the activity for which the justice of the peace seeks approval is a seemly or appropriate activity in which a judicial officer should engage, having regard to the public perceptions of judicial demeanour, independence and impartiality (paragraph 6(c) of the *Policy Re Extra-Remunerative Work)*. The Council has considered how that criterion should be applied and determined that it must be understood in the context of the public policy encapsulated in the legislative framework set out in the *Justices of the Peace Act* R.S.O. 1990, c. J.4, as amended and, in particular, in view of the amendments that resulted from the *Access to Justice Act,* 2006, S.O. 2006, c. 21. The Council noted that the legislative amendments brought about a comprehensive reform intended to strengthen public confidence in a professional bench and in the justice system.

Having carefully considered the public policy underlying the current legislative framework, the objectives of the amendments underlying the *Access to Justice Act,* 2006, and the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice,* the Review Council determined that it would in general be unseemly for full-time presiding justices of the peace to be engaged in commercial extra-remunerative work. The *Policy Re Extra-Remunerative Work* was amended to reflect the Council's decision.

The Review Council has approved some applications to extra-remunerative work by full-time presiding justices of the peace on an exceptional basis in limited circumstances where the activity was primarily non-commercial and had other intrinsic value from an educational, patriotic, religious or creative standpoint. In accordance with the Council's policy and procedure, an applicant who seeks approval to engage in commercial activity must address the issue of why the application for extra-remunerative work should be approved as an exception to the general policy that full-time presiding justices of the peace should not engage in extra-remunerative work that is commercial in nature.

The *Policy on Extra-Remunerative Work* is included as Appendix B in this Annual Report. The most recent version is posted on the Council's website under the link "Policies and Procedures" at:
www.ontariocourts.ca/ocj/jprc/policies-and-procedures/extra-remunerative-work/.

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Summary of Extra-Remunerative Files Closed in 2013

During 2013, the Council received five applications for approval to engage in extra-remunerative work and completed its consideration of all five applications. Case summaries for the extra-remunerative files that were completed in 2013 can be found at Appendix B in this Annual Report.

8. COMMUNICATIONS

The website of the Justices of the Peace Review Council includes information about the Council, including the most current version of the policies and procedures, as well as information about hearings that are underway or that have been completed. Information on ongoing hearings is available under the link "Public Hearings" at **www.ontariocourts.ca/ocj/jprc/public-hearings/**. Decisions made during the hearings are posted under the link "Public Hearings Decisions" at **www.ontariocourts.ca/ocj/jprc/public-hearings-decisions/**. Each Annual Report of the Council is also available on the website after it has been tabled in the legislature by the Attorney General.

The address of the Council's website is: **www.ontariocourts.ca/ocj/jprc/**.

A brochure to inform the public about the process to make complaints about judges and justices of the peace is available in hard copy at courthouses or by contacting the Council's office, and electronically on the website at **www.ontariocourts.ca/ocj/conduct/do-you-have-a-complaint/**. The brochure, "Do You Have a Complaint?" provides information on what a justice of the peace does, on how to tell whether the presiding judicial officer is a judge or a justice of the peace, and on how to make a complaint about conduct.

9. ACCOMMODATION OF NEEDS ARISING FROM A DISABILITY

A justice of the peace who believes that he or she is unable, because of a disability, to perform the essential duties of the office unless his or her needs are accommodated may apply to the Council under section 5.2 of the *Justices of the Peace Act* for an order that such needs be accommodated.

In 2013, the Review Council modified its procedures to address circumstances where an order of accommodation is sought by a justice of the peace in relation to assistive devices. Subsequently, the Review Council was informed by the Office of the Chief Justice that the Ministry of the Attorney General was developing an accommodation of needs process for judicial officers. The Review Council's procedures were revised accordingly to recognize the establishment and availability of the new process.

The current procedure that governs such applications is included in the Council's Procedure which is posted on the website at:
http://www.ontariocourts.ca/ocj/jprc/accessibility-and-accommodation/

During 2013, no applications for accommodation were decided upon by the Council.

10. OVERVIEW OF THE COMPLAINTS PROCESS

What initiates a review by the Review Council?

Any person may make a complaint to the Review Council about the conduct of a justice of the peace. Complaints must be made in writing. The governing legislation and the principles of natural justice do not provide for the Review Council to act on anonymous complaints or to initiate inquiries into the conduct of a judicial officer. Rather, an investigation conducted by the Review Council must be in response to specific allegations submitted by a complainant. Most of the complaints received by the Justices of the Peace Review Council are received from members of the public.

Does the Council have the legal authority to consider the complaint?

The Review Council has a legislative mandate to review complaints about the **conduct** of justices of the peace. The Council has no authority to review **decisions** of justices of the peace to determine whether there were any errors in how the issues were determined or how conclusions were drawn. If a party involved in a court case thinks that a justice of the peace reached the wrong decision in the case, he or she has legal remedies through the courts. Only a court can change the original decision of a justice of the peace.

All correspondence is reviewed to determine whether or not a complaint is within the jurisdiction of the Review Council. In those cases where the complaint may be within the jurisdiction of the Review Council, a complaint file is opened and a letter of acknowledgement is sent to the complainant, usually within a week of his or her letter being received by the Council.

If the complainant expresses dissatisfaction with a decision that has been made by a justice of the peace, the letter of acknowledgement advises the complainant that the Council has no power to change a decision made by a justice of the peace. In such cases, the complainant is advised that he or she may wish to consult legal counsel to determine what, if any, remedies may be available through the courts.

If an individual is complaining about his/her lawyer or a Crown Attorney, or another office, the complainant is generally referred to the appropriate agency or authorities.

What happens in the complaints process?

The *Justices of the Peace Act* and the procedures that have been established by the Council provide the current framework for addressing complaints about justices of the peace. If a complaint is ordered to a public hearing, certain provisions of the *Statutory Powers Procedure Act* also apply. The complaints procedure is outlined below. The current procedures are posted on the Council's website at: **www.ontariocourts.ca/ocj/jprc/policies-and-procedures/procedure/**.

Preliminary Investigation and Review

As soon as possible after receiving a complaint about the conduct of a justice of the peace, the office of the Council will acknowledge receipt of the complaint. If the complaint raised allegations of conduct about a justice of the peace who is presiding over a court proceeding, the Council will not generally commence an investigation until that court proceeding and any appeal or other related legal proceedings have been completed. This will ensure that any investigation by the Council is not interfering or perceived to be interfering with any on-going court matters.

If there is no on-going court proceeding, a complaints committee of the Council will be assigned to investigate the complaint. Members of the Council serve on complaints committees on a rotating basis. Each complaints committee is composed of: a provincially appointed judge who acts as chair; a justice of the peace; and, either a community member or a lawyer member. Complaints are not generally assigned to members from the same region where the justice of the peace who is the subject of the complaint presides. This avoids any risk of or perception of bias or conflict of interest between a member of Council and the justice of the peace.

Except for hearings ordered under section 11(15)(c) of the *Justices of the Peace Act* to consider complaints about specific justices of the peace, meetings and proceedings of the Review Council are not held in public. Section 11(8) of the *Act* requires that investigations by the Review Council must be conducted in private. The legislative framework recognizes the need to safeguard judicial independence while simultaneously ensuring judicial accountability and public confidence in the administration of justice.

If the complaint arose from a court proceeding, usually a transcript of the court hearing is ordered to be reviewed by the members of the complaints committee. An audio recording, if available, may also be ordered and reviewed. In some cases, the committee may find that it is necessary to conduct further investigation in the form of having witnesses interviewed. An external lawyer may be retained, pursuant to section 8(15) of the *Act*, to assist the committee by interviewing witnesses and providing transcripts of the interviews to the investigating complaints committee. Legal advice may also be provided.

The complaints committee will determine whether or not a response to the complaint should be invited from the justice of the peace in question. If a response is invited from the justice of the peace, the letter sent inviting a response will enclose a copy of the complaint, the transcript (if any) and all of the relevant materials considered by the committee. The justice of the peace may seek independent legal advice or assistance before responding. The justice of the peace will also be invited to listen to the audio recording, if it has been reviewed by the committee.

Section 11(15) of the *Justices of the Peace Act* gives the complaints committee the authority to dismiss a complaint after reviewing the complaint where, in the opinion of the committee: it is frivolous or an abuse of process; it falls outside the Council's jurisdiction (e.g. because it is a complaint about the exercise of judicial discretion); it does not include an allegation of judicial misconduct; the allegation is unproven; or, the misconduct does not rise to the level of misconduct that requires further action on the part of the Council.

Interim Recommendations

The investigating complaints committee will consider whether the allegation(s) warrants making an interim recommendation pending the final disposition of a complaint. Under section 11(11) of the *Act*, an interim recommendation for non-assignment of work or re-assignment to work at another court location may be made to the Regional Senior Justice appointed for the region to which the justice of the peace is assigned. The Regional Senior Justice may decide not to assign work to the justice of the peace until the final disposition (but he or she will continue to be paid); or, with the consent of the justice of the peace, may re-assign him or her to another location until the disposition of the complaint. It is within the discretion of the Regional Senior Justice as to whether he or she decides to act upon the recommendation from a complaints committee.

The Review Council has approved the following criteria in the procedures to guide complaints committees as to when an interim recommendation should be made:

- where the complaint arises out of a working relationship between the complainant and the justice of the peace and the complainant and the justice of the peace both work at the same court location;
- where allowing the justice of the peace to continue to preside would likely bring the administration of justice into disrepute;
- where the complaint is of sufficient seriousness that there are reasonable grounds for investigation by law enforcement agencies;
- where it is evident to the complaints committee that a justice of the peace is suffering from a mental or physical impairment that cannot be remedied or reasonably accommodated.

Where a complaints committee proposes to recommend temporarily not assigning work or re-assigning a justice of the peace to work at a different court location, it may give the justice of the peace an opportunity to be heard on that issue in writing before making its decision. Particulars of the factors upon which the complaints committee's recommendations are based are provided to the Regional Senior Judge to assist the Regional Senior Judge in making his or her decision, and to the justice of the peace to provide him or her with notice of the complaint and the complaints committee's recommendation.

Of the complaint files that were completed by the Council during 2013, complaints committee made a recommendation that one justice of the peace be non-assigned to a location other than where the complaint arose. The Regional Senior Justice agreed with the recommendation.

Dispositions of the Complaints Committee

When the investigation is completed, pursuant to section 11(15) of the *Act*, the complaints committee will do one of the following:

a) dismiss the complaint if it is frivolous, an abuse of process or outside the jurisdiction of the complaints committee;

b) invite the justice of the peace to attend before the complaints committee to receive advice concerning the issues raised in the complaint or send the justice of the peace a letter of advice concerning the issues raised in the complaint, or both;

c) order that a formal hearing into the complaint be held by a hearing panel; or,

d) refer the complaint to the Chief Justice of the Ontario Court of Justice.

The complaints committee reports to the Review Council on its decision and, except where it orders a formal hearing, does not identify the complainant or the justice of the peace who is the subject of the complaint in its report.

Notification of Disposition

After the complaints process is completed, the Review Council communicates its decision to the person who made the complaint and, in most cases, to the justice of the peace. A justice of the peace may waive notice of the complaint if it is being dismissed and no response was invited by the Council. In accordance with the Procedures of the Review Council, if the Review Council decides to dismiss the complaint, it will provide brief reasons.

Public Hearing Under section 11.1

When the complaints committee orders a public hearing, under section 11.1(1) of the *Act*, the Chief Justice of the Ontario Court of Justice, who is also the Chair of the Review Council, establishes a three-member hearing panel from among the members of the Council, composed of: a provincially appointed judge who chairs the panel; a justice of the peace; and, a member who is a judge, a lawyer or a member of the public. Complaints committee members who participated in the investigation of the complaint do not participate in its review by a hearing panel.

The legislation provides for judicial members to be appointed as temporary members of the Council to ensure that the three members of the hearing panel have not been involved in earlier stages of reviewing the complaint. The Chief Justice of the Ontario Court of Justice may appoint a judge or a justice of the peace who is not a member of the Review Council to be a temporary member of a hearing panel where necessary to form each quorum to meet the requirements of the *Act*.

By the end of the investigation and hearing process, all decisions regarding complaints made to the Justices of the Peace Council will have been considered and reviewed by a total of six members of Council – three members of the complaints committee and three members of the hearing panel.

The Review Council engages legal counsel, called Presenting Counsel, for the purposes of preparing and presenting the case about the justice of the peace. The legal counsel engaged by the Review Council operates independently of the Review Council. The duty of legal counsel engaged to act as Presenting Counsel is not to seek a particular order against a justice of the peace, but to see that the complaint about the justice of the peace is evaluated fairly and dispassionately to the end of achieving a just result.

The justice of the peace has the right to be represented by counsel, or to act on his or her own behalf in any hearing under this procedure.

The *Statutory Powers Procedure Act,* with some exceptions, applies to hearings into complaints. Persons may be required, by summons, to give evidence on oath or affirmation at the hearing and to produce in evidence at the hearing any documents or things specified by the panel which are relevant to the subject matter of the hearing and admissible at the hearing.

Public Hearing Unless Ordered Private

A section 11.1 hearing into a complaint is public unless the Review Council determines, in accordance with criteria established under the *Statutory Powers Procedure Act,* that matters involving public security may be disclosed; or, intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure of such matters, in the interests of any person affected or in the public interest, outweighs the desirability of following the principle that the hearing be open to the public.

In certain circumstances where a complaint involves allegations of sexual misconduct or sexual harassment, the Council also has the power to prohibit publication of information that would disclose the identity of a complainant or a witness who testifies to having been the victim of the conduct. If a complaint involves allegations of sexual misconduct or sexual harassment, the hearing panel will, at the request of the complainant or of a witness who testifies to having been the victim of such conduct by the justice of the peace, prohibit the publication of information that might identify the complainant or the witness, as the case may be.

Dispositions after section 11.1 Hearing

After hearing the evidence, under section 11.1(10) of the *Justices of the Peace Act,* the hearing panel of the Council may dismiss the complaint, with or without a finding that it is unfounded or, if it upholds the complaint, it may decide upon any one of the following sanctions singly or in combination:

- warn the justice of the peace;
- reprimand the justice of the peace;
- order the justice of the peace to apologize to the complainant or to any other person;
- order the justice of the peace to take specified measures such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;
- suspend the justice of the peace with pay, for any period; or,
- suspend the justice of the peace without pay, but with benefits, for a period up to thirty days.

Removal from Office

Following the hearing, the Review Council may make a recommendation to the Attorney General that the justice of the peace be removed from office. This sanction stands alone and cannot be combined with any other sanction. A justice of the peace may be removed from office only if a hearing panel of the Review Council, after a hearing under section 11.1, recommends to the Attorney General under section 11.2 that the justice of the peace be removed on the ground of:

- he or she has become incapacitated or disabled from the execution of his or her office by reason of inability to perform the essential duties of the office because of a disability and, in the circumstances, accommodation of his or her needs would not remedy the inability, or could not be made because it would impose undue hardship to meet those needs;
- conduct that is incompatible with the execution of the office; or
- failure to perform the duties of his or her office.

Only the Lieutenant Governor in Council may act upon the recommendation and remove the justice of the peace from office.

Recommendation of Compensation for Legal Costs

When the Justices of the Peace Review Council has dealt with a complaint, section 11(16) of the *Justices of the Peace Act* makes provision for a justice of the peace to request that a complaints committee recommend to the Attorney General that he or she should be compensated for all or part of the costs of legal services incurred in connection with the investigation. Such a request would generally be submitted to the Council after the complaints process has been completed, along with a copy of the statement of account of legal services to support the request. Similarly, section 11.1(17) allows a hearing panel to recommend compensation for all or part of the cost of legal services incurred in connection with a hearing.

In 2013, six recommendations for compensation were made by a complaints committee or hearing panel to the Attorney General that the justice of the peace be compensated for all or part of the cost of legal services incurred in connection with the investigation or hearing of the complaints.

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Legislation

The current legislative provisions of the *Justices of the Peace Act* concerning the Justices of the Peace Review Council are available on the government's e-laws website at **www.e-laws.gov.on.ca**. The website contains a database of Ontario's current and historical statutes and regulations.

11. SUMMARY OF COMPLAINTS CLOSED IN 2013

Overview

The Justices of the Peace Review Council carried forward 24 complaints to 2013 from previous years. During 2013, 51 new complaint files were opened with the Review Council. Including cases carried into 2013 from previous years, the total number of files open during 2013 was 75. Of the 75 open files in 2013, 36 files were completed and closed or ordered to a hearing before December 31, 2013.

Of the 36 files that were closed or ordered to a hearing, one was from 2009. This file was a lengthy complex matter that was ordered to a hearing. The file was closed after the justice of the peace resigned, effective December 31, 2013. Three files of the 36 files were opened in 2011, 14 in 2012 and 18 in 2013.

Thirty-nine complaints were still ongoing at the end of 2013 and were carried over into 2014. Of the 39 files carried over into 2014, two were from 2011. One of those had been held in abeyance as a result of a criminal charge arising from the same facts. The other 2011 file was held in abeyance pending the completion of another JPRC hearing arising from a different complaint. Three files were from 2012 and 34 were from 2013.

Dispositions

As indicated earlier, section 11(15) of the *Justices of the Peace Act* authorizes a complaints committee to:

- dismiss the complaint if it was frivolous, an abuse of process or outside the jurisdiction of the complaints committee;

- invite the justice of the peace to attend before the complaints committee to receive advice concerning the issues raised in the complaint or send the justice of the peace a letter of advice concerning the issues raised in the complaint, or both;
- order that a formal hearing into the complaint be held by a hearing panel; or,
- refer the complaint to the Chief Justice of the Ontario Court of Justice.

Of the 36 files addressed and closed, eight complaints were dismissed by the Review Council under section 11(15)(a) on the basis that they were found to be outside of the jurisdiction of the Council. These files typically involved a complainant who expressed dissatisfaction with the result of a trial or with a justice of the peace's decision, but who made no allegation of misconduct. While the decisions made by the justice of the peace in these cases could be the subject of other legal remedies, such as an appeal, the absence of any alleged misconduct meant that the complaints were outside of the jurisdiction of the Review Council.

In two cases that were closed, the Council lost jurisdiction over the complaints. This occurs when a justice of the peace retires, resigns or dies and no longer holds the office of justice of the peace.

Complaints within the jurisdiction of the Council included allegations such as improper behaviour (rudeness, belligerence, etc.), lack of impartiality, conflict of interest or some other form of bias.

Seventeen complaint files were dismissed by the Review Council under section 11(15)(a) after they were investigated by a complaints committee and determined to be unsubstantiated or unfounded or the behaviour did not amount to judicial misconduct.

In five cases, the Review Council provided advice to justices of the peace under section 11(15) (b) of the *Act*. In four of those cases, the justice of the peace was sent a letter of advice concerning issues raised in the complaints, and in one cases the justice of the peace attended before the complaints committee to receive advice in person concerning the issues raised in the complaints.

One complaint was referred to the Chief Justice of the Ontario Court of Justice pursuant to section 11(15)(d) of the *Act* during 2012. A complaints committee will refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where the committee is of the opinion that the conduct complained of does not warrant another disposition and that there is some merit to the complaint. As well, the committee is of the view that a referral to the Chief Justice is a suitable means of informing the justice of the peace that his or her course of conduct was not appropriate in the circumstances that led to the complaint. The committee may recommend imposing conditions on its referral to the Chief Justice where the committee agrees that there is some course of action or remedial training of which the justice of the peace could take advantage and the justice of the peace agrees.

Following the meeting with the justice of the peace, the Chief Justice provided a written report to the committee. After reviewing the Chief Justice's report, the committee noted that the matter had been appropriately addressed and the file was closed.

Three formal hearings were ordered. Two were completed in 2013. Decisions made in the completed cases are included in the appendices of this Annual Report. A public hearing will be ordered pursuant to section 11(15)(c) where the complaints committee is of the opinion that there has been an allegation of judicial misconduct which the majority of the members of the committee believes has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct. When a hearing is ongoing, updates on the status of the case are posted on the Review Council's website. At the end of a hearing, the decision can be found on the website under the link "Public Hearings Decisions" at **www.ontariocourts.on.ca/jprc/en/hearings/**.

Types of Cases

Of the 36 complaint files that were completed and closed or ordered to a hearing, 13 arose from events during provincial offences proceedings, 12 arose from matters in Intake Court, and five arose from proceedings under the *Criminal Code* (two from set-date court, two bail hearings and one peace bond application), and six related to conduct outside of the courtroom.

Case Summaries

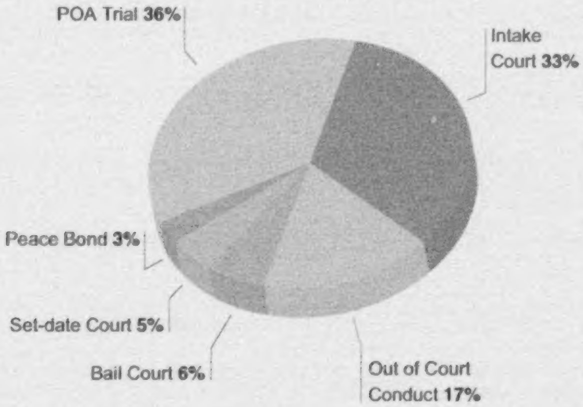
Case summaries for each complaint follow in Appendix A of this Report.

SUMMARY OF COMPLAINTS CLOSED IN 2013

DISPOSITIONS ON COMPLAINTS CLOSED IN 2013	
Dismissed as out of jurisdiction	8
Dismissed as not substantiated or did not amount to misconduct	17
Advice Letter	4
Advice – In-person	1
Referred to Chief Justice	1
Loss of jurisdiction	2
Public Hearing	3
TOTAL CLOSED IN 2013	36

TYPES OF CASES CLOSED IN 2013

TYPES OF CASES	# OF COMPLAINTS
Provincial Offences Court	13
Intake Court	12
Bail Court	2
Set-date Court	2
Pre-enquêtes	0
Peace Bond Applications	1
Out of Court Conduct	6
Total	36



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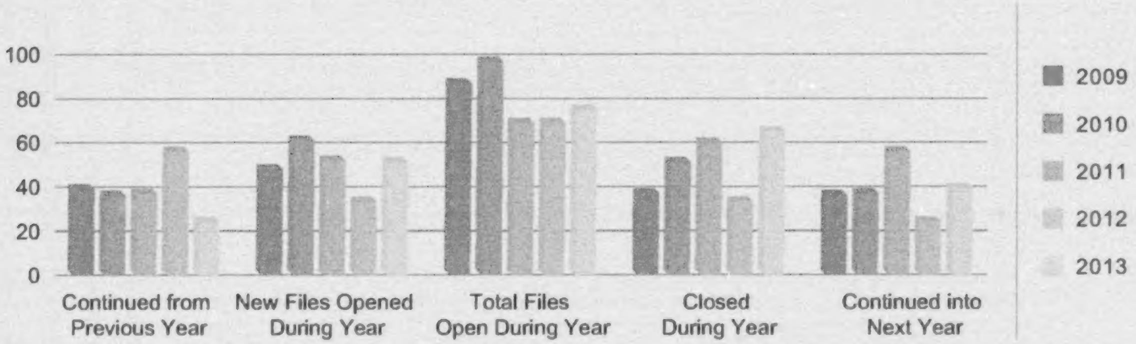
CASELOAD IN CALENDAR YEARS

	2009	2010	2011	2012	2013
Continued From Previous Years	39	36	37	56	24
New Files Opened During Year	48	61	52	33	51
Total Files Open During Year	87	97	89	89	75
Closed During Year	51	60	33	65	36
Continued into Next Year	36	37	56	24	39



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APPENDIX A

2013
CASE SUMMARIES

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APPENDIX A

Case Summaries

Complaint files are given a two-digit prefix indicating the complaint year, followed by a sequential file number and by two digits indicating the calendar year in which the file was opened (i.e., Case No. 24-001/13 was the first file opened in the 24th complaint year and opened in calendar year 2013).

Except where a public hearing was ordered, details of each complaint for which the complaints process was completed, with identifying information removed as required by the legislation, are provided below. Decisions on public hearings are provided in other appendices in this Annual Report.

CASE NO. 20-034/09

In 2012, a hearing commenced in relation to a complaint about former Justice of the Peace Solange Guberman. A decision of the Hearing Panel rejecting an application for non-publication was included in the JPRC Annual Report for 2012 and is posted on the JPRC's website under the link Public Hearings Decisions in the year 2012. As noted in the decision of the Panel, Her Worship sent a letter to the Attorney General tendering her resignation from office. The file was closed after the resignation came into effect, at which time the Council lost jurisdiction over the matter.

CASE NO. 22-008/11

The complainant was a senior manager of a court location. She wrote to the Council about the conduct of a male justice of the peace towards a female member of court staff. An affidavit was enclosed from the female court staff person outlining incidents with His Worship. It was alleged that His Worship made improper comments and conducted himself improperly towards a court employee in a manner that a person ought to know would be unwelcome, offensive, embarrassing and hurtful. The senior manager stated in her letter that the city:

> "...will not condone any form of harassment and is committed to promoting appropriate standards of conduct at all times. The City is committed to providing a safe and healthy work environment, free of harassing behaviour, which is in compliance with Occupational Health and Safety Standards and

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> the Ontario Human Rights Code. Court Services employees are expected to conduct themselves in a respectful and professional manner and it is expected that professionals working in the same environment reciprocate the courtesy and treat staff with dignity and respect."

In her affidavit, the court staff employee alleged that His Worship leered at her and "continually looked me up and down and spoke to my chest, rather than looking at my face as we spoke". She also indicated that he told her that she was too young to have one boyfriend and be in a committed relationship and should experience other men before she got older and got married. She outlined six specific incidents involving His Worship.

The complaints committee reviewed and considered the complaint and the materials enclosed with the complaint. The committee retained an external independent lawyer to assist by interviewing persons who had relevant information. The lawyer interviewed the witnesses and provided transcripts of the interviews to the complaints committee. Following its review of the transcripts, the committee provided His Worship with disclosure of the documents and the interviews and invited and reviewed a response to the complaint from him.

The committee observed from His Worship's response that he took some responsibility for his actions and that he was prepared to apologize in writing to the court staff person. He also provided a letter from the Regional Senior Justice of the Peace confirming that he would voluntarily not be assigned at a courthouse where she worked. However, the committee was concerned that His Worship may not fully appreciate the expectations held by the public of the high standards of conduct for persons who hold the office of a justice of the peace, and the negative impacts that can result if those high standards of excellence are not upheld.

The preamble to the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* states:

> "The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office."

The committee observed that in the *Principles of Judicial Office*, the standard of excellence expected includes:

> "Justices of the peace should maintain their personal conduct at a level which will ensure the public's trust and confidence."
>
> "Justices of the peace must strive to be patient, dignified and courteous in performing the duties of judicial office..."

Further, the committee noted that in a recent hearing conducted by the Justices of the Peace Review Council, the relationship between justices of the peace and court clerks was addressed. In that case, the hearing panel stated:

> Even though a courtroom clerk is not employed by the Court directly, as noted above, the courtroom clerk acts under the direction of the presiding justice of the peace in the courtroom. In order to maintain the integrity of the judiciary within this framework, the standard of conduct expected in this relationship could reasonably be expected to be analogous to that expected of someone in a supervisory capacity in a more typical working relationship. (In the Matter of a Hearing under section 11.1 of the Justices of the Peace Act, R.S.O. 1990, c.J.4, as amended, Concerning a Complaint about the Conduct of Justice of the Peace Paul Kowarsky (2011))

The complaints process through the Review Council is remedial in nature and through the review of one's conduct, improvements are made as to how situations and individuals are treated and handled in the future. Pursuant to section 11(15)(d) of the *Justices of the Peace Act*, the complaints committee referred the complaint to the Chief Justice to discuss with His Worship the importance of a justice of the peace conducting himself or herself with dignity and professionalism. Acting in a manner that is perceived to be offensive to women or unprofessional toward court staff can impact on public confidence in the judicial officer and in the bench generally, and diminishes the dignity of the court.

The complaint was referred to the Chief Justice on the condition that His Worship was willing to attend a remedial course recommended by the Chief Justice that would provide gender sensitivity training to assist His Worship to more fully understand appropriate interactions with women and training on professional boundaries to assist him in better recognizing and respecting professional boundaries.

The Chief Justice referred His Worship for one-to-one education and counselling in gender sensitivity and professional boundaries. After His Worship completed his sessions, a meeting with the Chief Justice was arranged. The Chief Justice provided a written report on her meeting to the complaints committee.

After reading the report, the committee observed that His Worship took full responsibility for his inappropriate behaviour. The counselling sessions had provided him with a good understanding of power imbalances and the importance of maintaining appropriate professional boundaries. The Chief Justice discussed with His Worship how his conduct fell below the standard of behaviour expected of a justice of the peace, and the expectations held by the public of the high standards of conduct for persons who hold the office of a justice of the peace, and the negative impacts that can result if those high standards of excellence are not upheld. His Worship understood that as a justice of the peace, his behaviour had a negative impact not only on the complainant but also on the public opinion of the Court. He expressed his sincere regret that he behaved unprofessionally.

His Worship provided the Chief Justice with a letter of apology addressed to the complainant which the Chief Justice forwarded to the committee.

Following the counselling sessions and the meeting with the Chief Justice, His Worship was aware of how his conduct fell below the standard of behaviour expected of a justice of the peace. He was aware that he must maintain appropriate personal and professional boundaries. His Worship undertook to remain professional in his interactions with women. As mentioned above, at his request, he was not assigned at the court location where the court staff person worked.

The committee forwarded the letter of apology from His Worship to the court staff person and the file was closed.

CASE NO. 22-013/11

The complainants were upset because their son was taken into custody under a Form 2 of the *Mental Health Act*, and they believed that the Form 2 was issued by a justice of the peace based on false information. A Form 2 requires the apprehension and transport of the named person to a physician. The physician can then determine if the patient requires an involuntary psychiatric assessment and if this is the case, the patient will be brought to a hospital where psychiatric examinations are performed. For a Form 2 to be issued, the person applying for it must provide enough information for the justice of the peace to be assured of the necessity of the Form 2.

The complainants indicated in their letter that their son had on-going problems with his former neighbour and had been the subject of harassment by him. Prior to the events giving rise to the complaint, the son had called the police and the neighbour was charged with criminal harassment and uttering death threats. The complainants advised that a short time later, police officers and a nurse arrived at their son's residence to execute a Form 2 under the *Mental Health Act* which had been issued by a justice of the peace.

The complainants indicated that their son was held at the hospital and then released within an hour after being seen by a nurse and doctor. The complainants alleged that after talking to their son, the lead police officer realized that their son's behavior was not a problem and believed that the justice of the peace had made a gross error in judgment in issuing the Form 2. The complainants said that the officer "was so outraged that he took it upon himself to speak with [the justice of the peace] personally". The complainants stated that they were later told by the officer that Her Worship responded by saying "she erred on the side of caution". The complainants viewed this as "a good excuse to cover for her lack of due diligence". They indicated that the officer also advised the justice of the peace to take steps to prohibit the former neighbour from bringing any further actions against the complainants' son, and Her Worship told him that she would "red flag" the neighbour's name. They alleged that "perhaps [Her Worship] red flagged [their son's name] as well so there would be no further recrimination against her."

The complainants advised that their experience was extremely upsetting and stressful for them and their son, and impacted on their health. They expressed serious concerns about the issuing of the Form 2 in such circumstances. They queried why Her Worship did not question the neighbour further. They questioned what evidence he provided as a basis for Her Worship issuing a Form 2.

They stated that they did not understand why Her Worship didn't follow up on the information provided by the police officer, especially after learning that she "made a gross error in judgment". They asked why she could not have issued a warrant against the neighbour for perjury, malicious character assassination, mischief and harassment.

They felt that "there was a miscarriage of justice which was further aggravated by a conspiracy of the Court to hide the event in order to protect [the justice of the peace] from any actions we might take." They felt that their son was denied his rights to fair and unbiased justice.

The complaint was assigned to an investigating complaints committee. The committee requested a copy of the transcript and the audio recording of the proceeding in which the neighbour appeared before the justice of the peace. As well, the committee requested a copy of the audio recording of the appearance of the police officer before the justice of the peace. The committee requested and reviewed a copy of the Form 2 application, and a copy of the informations that set out the criminal charges against the former neighbour. The committee retained an independent external lawyer to interview the police officer about the events that gave rise to the complaints.

Initially, Court Services staff could not locate the audio recording. The tapes related to a date some years prior. However, after a thorough search, the audio recording was located. The committee was informed by Court Services staff that the neighbour's appearance was not recorded on the audio tape. They indicated that their tape was blank and a company specializing in the restoration of audio recordings had been asked to examine the audio tape. The company advised that the tape was blank.

In his interview, the police officer confirmed that he believed that the Form 2 should not have been issued and that he had spoken with the justice of the peace with an objective of ensuring that the neighbour could not obtain another Form 2 in relation to the complainants' son. He indicated that the justice of the peace had been under the impression that the neighbor still lived in the same building as the complainants' son. He said that Her Worship had said she would make sure that another Form 2 would not be issued for the complainants' son. The police officer's conversation with Her Worship was not recorded so there was no court record of what was said.

The committee invited a response from Her Worship to the allegations. Her Worship advised that she had attended at the courthouse and tried to listen to the audio recording of the date when the neighbour had appeared before her. She indicated that she had heard some voices on the audio recording of the date when the informant appeared before her to request the Form 2.

At the request of Her Worship's lawyer, the committee retained a second expert in the restoration of audio recordings to examine the audio tape of the appearance before Her Worship. After a careful forensic examination of the audio tape, of similar blank tapes and of two recording machines, the expert found that there were voices of some proceedings that were recorded on the audio tape. There were recordings of voices up to the time when the neighbour would have appeared before Her Worship. The tape was blank from the point when the neighbour appeared in the court.

The committee provided the additional information about the audio tape to the justice of the peace and invited her to respond to the allegations. Her Worship provided a response, assuring the committee that it was her habit to make a record of appearances for Form 2 applications. Her notes in the court log for the day in question indicated that she had made a record. Her Worship also shared her independent recollection of the events, confirming that she had spent approximately forty-five minutes with the neighbour and his girlfriend. She said that she was informed of the criminal charges against the neighbour and he had said that the charges were fabricated by the complainants' son. Her Worship expressed her regret that there was no audio recording of the matter and explained that she had made every effort to be fair.

With respect to the conversation with the police officer, Her Worship indicated that the conversation had not been recorded after the officer requested that the conversation be "off the record". She indicated that the officer had asked that Her Worship pass information along so that the neighbour and his girlfriend could not have another Form 2 issued in relation to the complainants' son. Her Worship said that she had explained to the police officer that she could not do that, as it would interfere with judicial independence and the court process to do so. She told the committee that she did not forward information to any other justices of the peace and she did not take any steps to "red flag" or influence the way another justice of the peace might consider any future application by the neighbour or any other person in relation to the complainants' son. Her Worship expressed her regret that the conversation had not been recorded. She assured the committee that she was not part of any conspiracy.

The committee noted that judicial discipline must respect constitutionally-protected judicial independence. If a person believes that a justice of the peace made a legal error in his or her decision-making, it usually is a matter for an appeal rather than judicial discipline. It is only in limited instances that legal errors may be found to constitute judicial misconduct. Errors in a single case do not constitute judicial misconduct in the absence of abuse of office, bad faith, intentional disregard for the law, a pattern of wilful misconduct, or analogous conduct.

The committee concluded that there was no record of the proceeding of the appearance by the neighbour before the justice of the peace. In the circumstances, without the audio recording or transcript, the committee could not determine what was said in relation to the neighbour's request for a Form 2. The Form 2 documents showed that the neighbour had sworn his beliefs under oath. The evidence from the police officer confirmed that Her Worship had been under the impression that the neighbour still resided in the same building as the complainants' son. The committee concluded that the evidence did not support a basis for a finding of judicial misconduct. The committee determined that the decision made by the justice of the peace to grant the Form 2 was a matter of judicial decision-making outside of the jurisdiction of the Review Council.

With respect to the allegation that Her Worship took some action to "red flag" the neighbour's name so that he could not take further actions against the complainants' son, the committee noted that every justice of the peace has a responsibility to remain independent and impartial. Action should not be taken by one justice of the peace that could pre-determine or be perceived as pre-determining the outcome of a future application to the Court. After reviewing the response from the justice of the peace, the committee was satisfied that she did not "red flag" the case to try to pre-determine the outcome of any future application.

With respect to the question from the complainants about why the justice of the peace could not have issued a warrant against the neighbour for perjury, malicious character assassination, mischief and harassment, the committee noted that a justice of the peace must remain impartial and independent. The responsibility of a justice of the peace is to make decisions based on the information before him or her. As a judicial officer, he or she should not initiate other legal actions against one of the parties involved in a case that had been before him or her in court.

The committee observed that every justice of the peace must be very mindful of how important it is to have a proper record of the decisions made in judicial proceedings. Without a record of the evidence and reasons that led to a decision made by a justice of the peace, a person whose rights and freedoms are impacted by that decision has no recourse to have another court review that decision. Public confidence in the administration of justice depends upon transparency in the process and a means of demonstrating how and why decisions have been rendered that affect a person's rights and freedoms.

The complaints process through the Review Council is remedial in nature and through the review of one's conduct, improvements are made as to how situations and individuals are treated and handled in the future. The committee decided that the appropriate disposition was to provide Her Worship with written advice as its disposition of the matter pursuant to section 11(15)(b) of the *Justices of the Peace Act*.

The committee provided advice to Her Worship about the importance of ensuring a proper record of all court proceedings. The committee referenced the case of *R. v. Billingham* which deals with the importance of a justice of the peace ensuring a comprehensive record of all proceedings. The ability of a person impacted by a decision made by a judicial officer to determine why the decision was made rests upon the ability to access a record that shows the evidence and reasons. A proper record has a critical role in the overall impression that is left with a member of the public about how justice is administered and in ensuring impartiality and fairness.

As well, the committee observed that within the complaint review process, the court record is often the best and most objective evidence available to inform the investigating complaints committee what happened. The absence of a record can, such as in this case, prevent the complaints committee from making findings and hinder its ability to fully assess a complaint.

After the committee provided its advice to Her Worship, the file was closed.

CASE NO. 22-042/11

The complainant was a municipal staff person. She alleged that she had been the subject of various forms of harassment by the justice of the peace and that he had participated in the public harassment and defamation of her character. She alleged that at a public meeting, His Worship declared that she made errors that had serious consequences, she was incompetent and he asked for her resignation. She alleged that he pointed his finger at her, took steps towards her and was yelling, and appeared extremely agitated and angry towards her. She also alleged that on other occasions, he said that she erred in not following the letter of the law. She indicated that his statements were attempts to discredit her and were not true. His comments were made to prominent members of the community and to members of the press.

She also alleged that His Worship would preface everything that he said or wrote by stating he knew something about the law, and by referring to his background in the justice system and his experience as a justice of the peace in an attempt to determine his credibility and undermine hers.

She alleged that there was a history of his targeting her professional conduct, that on at least two occasions he had "verbally assaulted her" and accused her of actions that were untrue. She alleged that observers had commented on his gestures and actions, such as times when he at, various points, stomped his feet, threw his papers down on the table and pointed his finger threateningly at her.

The complainant provided information about a possible motive for His Worship's actions. She also alleged that his actions and accusations were defamatory and causing her to have symptoms of illness.

The committee requested further information from the complainant and reviewed all correspondence received from her. As well, the committee reviewed materials publicly available through her employer's website, newspaper articles, and an audio recording of a meeting attended by the justice of the peace which was obtained from the complainant. The committee also retained an independent lawyer to interview the complainant and other witnesses of some events described by the complainant. Each interview was transcribed and the transcripts were carefully reviewed by the members of the committee.

The committee observed that the place of residence where the complainant and His Worship resided was small. In such a small community, members of the council and of the community would likely know that His Worship is a justice of the peace. In a small community, it is possible that a judicial officer could be perceived to have authority, power and discretion.

The investigation disclosed that there was conflicting and inconsistent evidence about things that His Worship said and the manner in which he conducted himself at meetings about the local issues.

Despite the inconsistencies among the witnesses, what was evident to the committee was that the issues under consideration by the politicians in the town had been very controversial and strong competing views have arisen. Emotions had run high. The relationships between different politicians and members of the community, including His Worship, appeared to have been very strained and emotional at times. The evidence showed that following interactions between those involved, including His Worship, some members of the municipal Council had perceptions that his conduct had been aggressive. The conduct of an individual justice of the peace can impact on the public impression of the judiciary in general, and on its confidence in the judiciary in general.

After considering the allegations and all of the various versions of events gathered through the investigation, the committee remained concerned by some evidence of conduct and comments on the part of His Worship and the perceptions that resulted, including his references to the complainant in an affidavit as unprofessional, immoral and combative. He referred to Council and staff as spoiled children. The investigation also showed that His Worship had a somewhat visible involvement in local political issues and had, on occasion, introduced himself as justice of the peace by way of background.

A vital foundation of the justice system is public confidence in the administration of justice and in the judiciary. *The Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* provide guidance on conduct in the community. The preamble states:

> "The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office."

The *Principles* also state:

3. THE JUSTICE OF THE PEACE IN THE COMMUNITY

   3.1 Justices of the peace should maintain their personal conduct at a level which will ensure the public's trust and confidence.

   3.2 Justices of the peace must avoid any conflict of interest, or the appearance of any conflict of interest, in the performance of their judicial duties.

Commentaries:

> Justices of the peace must not participate in any partisan political activity.
>
> 3.3 Justices of the peace must not abuse the power of their judicial office or use it inappropriately.

The committee noted that the Canadian Judicial Council addresses political activity in the *Ethical Principles for Judges*.

While these ethical principles are advisory and not binding, they provide relevant guidance.

The committee observed that judicial officers must be mindful that their conduct both on and off the Bench, inside and outside of the courthouse plays a role in the level of confidence of the public in the judiciary. Given the role of a judicial officer, the perceptions of members of the public of steps taken by a judicial officer in speaking out in a personal capacity are very important. The conduct of a justice of the peace plays a vital role in building and maintaining the public's respect and confidence in an individual judicial officer, on the bench, and in the justice system. A justice of the peace must be extremely aware of and mindful of the boundaries of propriety, and must guide his actions accordingly.

Each and every comment that a justice of the peace makes, his tone and manner are all important elements of how he, a justice of the peace, is perceived by members of the public. This is so in the courtroom and in the community.

The complaints committee decided to invite a response from His Worship to the complaint. His Worship provided a response. The committee could see from his response that His Worship had thoughtfully reflected upon his conduct and on the responsibilities of a justice of the peace. He expressed his intention to proceed differently in the future. He realized that he could have handled things differently and expressed regret that he had not done so.

The Review Council, and by extension, every complaints committee, has the role of maintaining and preserving the public's confidence in judicial officials and in the administration of justice through its review of complaints. It is well established law that the approach to be taken is remedial. Although the committee could see from His Worship's

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response that the complaints process had already been instructive for him, in considering the nature of the allegations and the evidence that was gathered, with an objective of avoiding any similar instances in the future, the committee decided that the appropriate disposition was providing advice in person to His Worship pursuant to section 11(15)(b) of the *Justices of the Peace Act*.

The committee met with His Worship and provided its advice concerning the issues raised in the complaint, including the negative perceptions that resulted from his conduct, the high expectations the public places on the conduct of judicial officers, and the importance of the principle that in the community, justices of the peace should maintain their personal conduct at a level which will ensure the public's trust and confidence.

As indicated above, the complaints process through the Review Council is remedial in nature and through the review of one's conduct, improvements are made to how situations and individuals are treated and handled in the future. After providing its advice to His Worship, the complaints committee closed the file.

CASE NO. 23-013/12

The complainant indicated that she attended before the subject justice of the peace to explain the circumstances that led to a charge against her of not paying a transit fee. The complainant indicated in her letter of complaint that at the time when she was charged, she tried to explain the situation to the police officer but the officer told her to call the phone number listed on the ticket and explain the situation to them. She said that she followed that advice and the female who answered the call was very rude and told her that she doesn't listen to anyone's situation. The complainant said she was told to pick option two on the ticket and explain her situation to the judge at the courthouse.

The complainant advised that she attended the courthouse to see a justice of the peace in order to explain her situation. She alleged that, "I entered the room and right away Her Worship started screaming in my face that I was guilty." She alleged that she tried to explain what happened, and Her Worship told her "that she doesn't want to hear anything." She also said that Her Worship would not permit her to speak and "the more I tried to talk and explain myself, the more she interrupted me with a high volume voice." The complainant alleged that she was scared to a point where she started crying in the room. She stated that Her Worship said in a rough voice that she would reduce the penalty. The complainant indicated she was innocent and tried to show her evidence but Her Worship didn't want to see anything. Her Worship allegedly "just opened the door impolitely and told me to leave right away". When the complainant asked if she could have the penalty reduced, Her Worship allegedly said, "NO in a rude way after saying a YES at the beginning".

The complainant expressed that Her Worship "didn't treat me as a human being nor with dignity and respect."

The complaint was assigned to an investigating complaints committee. The committee reviewed the complaint letter and requested the transcript and audio recording of the complainant's attendance before Her Worship. Court Services informed the committee that no audio recording of this appearance was made and as such they were unable to prepare or provide a transcript. Court Services confirmed that the complainant did not plead guilty before Her Worship and that the fine appeared to have been paid voluntarily at the court counter on that same day. Court Services provided a copy of the certificate of offence and indicated that no other documents or information were available pertaining to the complainant's matter or attendance in court.

With no court record being available and having considered the allegations, the committee determined that it was necessary to invite a response from Her Worship. The committee could see from Her Worship's response that she had not realized that the matter was not recorded on the day in question. There may have been a technical problem with the recording equipment. Her general practice was to record matters. Her Worship demonstrated a sincere commitment to ensuring that in the future a court record would be made of each appearance before her.

In her response, Her Worship provided her independent recollection of the complainant's attendance before her. Her Worship indicated that she recalled the particular matter because of the complainant's unusual offer to give the set fine amount to a person in need rather than the city. Her Worship explained that in the complainant's explanation, she began to provide evidence which she appeared to believe would prove her to be innocent of the charge. Her Worship indicated that she had explained to the complainant that she could not view such evidence in a guilty plea court and that this particular court was only to deal with matters where people believed themselves to be guilty of the charge. Her

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Worship said that the complainant insisted that Her Worship review the evidence and appeared to believe that she should not pay a fine and she could instead donate the money to someone who needed it. Her Worship advised that the complainant became angry and upset, crying as she left the court. Her Worship told her to return to the counter to set a trial date.

Following a careful review of the complaint and Her Worship's response, the committee was left with somewhat differing versions of the events of the day in question. It appeared to the committee that the complainant may not have fully understood the court process. It was clear to the committee that the complainant became genuinely upset by what occurred and felt that she was dealt with in a rude and unprofessional manner. Conversely, it appeared to the committee that Her Worship felt that she had been respectful in handling the matter and that she had explained sufficiently why she couldn't review the complainant's evidence.

The committee observed that it is important for a defendant in court to have a very clear understanding of the process in order that he or she can make a fully informed choice before entering a plea. A defendant has a right to have a trial where the Crown has to prove the charges against him or her, and where evidence must be called and considered by a justice of the peace. However, by pleading guilty, he or she is giving up those rights. A guilty plea is considered the end of the challenge to the charge against the defendant and a full admission of guilt. As well, the right to enter a guilty plea does not mean that a defendant can say that he or she only wishes to be considered guilty if a particular outcome is granted. Further, a justice of the peace has the discretion as to whether he or she is satisfied that the conditions for a guilty plea exist and as to whether a guilty plea will be accepted.

In the circumstances, without the audio recording or transcript, the committee could not determine what was said by the complainant or by the justice of the peace. Nor could the committee hear the manner or tone in which they spoke.

The complaints process through the Review Council is remedial in nature and through the review of one's conduct, improvements are made as to how situations and individuals are treated and handled in the future. The committee decided that the appropriate disposition was to provide Her Worship with written advice as its disposition of the matter pursuant to section 11(15)(b) of the *Justices of the Peace Act*.

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The committee provided advice to Her Worship about the importance of ensuring a proper record of all court proceedings. The committee referenced the case of *R. v. Billingham* and the importance of a justice of the peace ensuring a comprehensive record of all proceedings, including Guilty Plea Court appearances. Within the complaint review process, the court record is often the best and most objective evidence available to inform the committee as to what happened in court. The absence of a record can, such as in this case, prevent the complaints committee from making findings and hinder its ability to fully assess a complaint.

The committee was of the view that every justice of the peace must be very mindful of each and every comment made, one's tone and manner in the courtroom. Although the committee could not determine what actually occurred, the committee reminded Her Worship that every comment and the tone in which it is delivered, has a role in the overall impression that is left with a member of the public about how justice is administered and in ensuring impartiality and fairness.

The committee could see from Her Worship's response that it was her intention to convey to the complainant that, as a justice of the peace, she was not satisfied that the requirements had been met to accept a guilty plea. The committee advised Her Worship that it is important to remember self-represented defendants may have no familiarity with the legal process or concepts. It is always important for a justice of the peace to be aware of how his or her comments and conduct are viewed and understood by those appearing before him or her.

The committee understood that Provincial Offences court is very busy, with many defendants. While the committee appreciated the demands upon a justice of the peace, the committee reminded Her Worship that regardless of how busy a court is, there is an obligation on every justice of the peace to take the requisite time to listen to individuals before him or her, to explain what the proceeding is about so that they can properly understand the process and the decision of the justice. This is particularly important if the individual before them is not legal counsel.

After providing its advice, the committee was of the view that no further action was required and the file was closed.

CASE NO. 23-019/12

The complainant sent a letter of complaint in relation to the decision of a justice of the peace to issue an arrest warrant several years earlier. The arrest warrant was requested by a police detective to enter a residence to arrest the complainant.

The complainant alleged that the justice of the peace did not understand the concept of the high standards of conduct expected of justices of the peace. He also alleged that it appeared that His Worship was not competent and did not understand his responsibilities. He stated that His Worship signed the warrant without receiving any evidence in writing and without it being sworn under oath, which he said were requirements under section 529 of the Criminal Code of Canada.

The complainant included references to the *Principles of Judicial Office for Justices of the Peace of the Ontario Court of Justice,* an excerpt of section 529 of the *Criminal Code,* and a citation of a decision in a Saskatchewan case pertaining to the issuance of a search warrant.

With a second letter, the complainant enclosed an excerpt from the Principles of Judicial Office for Justices of the Peace of the Ontario Court of Justice and a copy of a transcript of the police officer's appearance before His Worship in Intake Court when the warrant was issued. He also provided a partial excerpt from the transcript of a deposition by the police officer made during a civil proceeding in which he was asked questions by a lawyer about his appearance before the justice of the peace when the warrant was issued.

In his correspondence to the Review Council, the complainant asked:

1) Why His Worship did not comply with his duty to follow the law?
2) Why His Worship did not comply with his duty to maintain his professional competence in the law? and
3) Why His Worship did not comply with his duty not to abuse the power of his judicial office?

After the complainant was told that a file was being opened, he sent a third letter, stating, "I wish to provide the Review Council with some additional legal issues which need to be addressed." He set out a number of arguments about the legal requirements for warrants, citing a number of court decisions. He alleged that the justice of the peace "simply rubber stamped" the officer's warrant without any due diligence. He expressed his view that in this case the justice of the peace capitulated to the demands of the police officer without complying with his duty to follow the law.

The committee reviewed the correspondence and materials submitted by the complainant. The copy of the Intake Court transcript had some portions where it was indicated that the dialogue was inaudible. The committee sought to obtain a complete certified transcript of the police officer's appearance before His Worship. Initially, court staff advised that although the Intake Sheet indicated that the police officer appeared before His Worship on the date specified by the complainant, they could not locate any record of the appearance. However, staff also advised that given the period of time that had passed since the proceeding occurred, records might be stored in archives at a different location. Subsequently, court staff located the court record and provided a certified transcript of the proceeding. The committee also obtained and listened to the audio recording of the officer's attendance. Both the audio recording and the certified transcript had portions where the dialogue between the police officer and the justice of the peace were not audible.

The committee wrote to the complainant to request further information, including a full copy of the deposition of the police officer. The complainant provided other documents but did not provide the full transcript of the deposition. The committee wrote again to the complainant to request information. Subsequently, he provided a full copy of the transcript of the deposition. He also included a copy of the warrant that gave rise to his complaint that showed that the justice of the peace had signed the warrant on the wrong spot. The committee noted that during the deposition in the civil proceeding, the police officer was asked by the lawyer whether the evidence was given to the justice of the peace in writing, but he was not asked whether it was given under oath.

The committee also contacted Police Services to enquire how the police officer had provided the information to the justice of the peace.

With respect to the allegation that the justice of the peace did not receive the evidence from the police officer in writing, the committee found that the investigation confirmed that the police officer had provided the evidence to the justice of the peace orally. The committee noted that the request for a warrant was granted under section 529.1 of the *Criminal Code* which does not require that the information be given in writing.

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The committee found that the investigation confirmed that the evidence was given by the police officer to the justice of the peace under oath.

The committee noted that if the complainant disagreed with the decision by His Worship to issue the warrant based on the facts provided to him by the police officer, or with the legality of the warrant, the appropriate way for him to proceed on such matters was through legal remedies in the courts. Judicial discipline must respect constitutionally-protected judicial independence. If a justice of the peace makes a legal error (and the committee made no such finding), it usually is a matter for an appeal rather than judicial discipline. It is in limited instances that legal errors may be found to constitute judicial misconduct. Errors in a single case do not constitute judicial misconduct in the absence of abuse of office, bad faith, intentional disregard for the law, a pattern of wilful misconduct, or analogous conduct.

With respect to the complainant's allegation that His Worship violated his duty as set out in the *Principles of Judicial Conduct for Justices of the Peace of the Ontario Court of Justice*, the committee observed that the *Principles* are not a proscriptive conduct code. It is not the case that any time a decision made by a justice of the peace can be formulated as engaging a specific ethical duty, the decision is open to a finding of sanctionable conduct. They set out a general framework of values and considerations that are relevant in evaluating allegations of improper conduct by a justice of the peace. If conduct is inconsistent with or in breach of the *Principles* (and the committee made no such finding), then this is a factor in determining whether a justice of the peace has met the objective standard of independence, impartiality and integrity required of a justice of the peace. However, the *Principles* do not tell a justice of the peace what to do in a particular case. Much will depend on the context and the facts of each individual case.

After carefully reviewing all of the evidence, the court record and the information from Police Services, the committee concluded that the allegations related to the exercise of judicial decision-making and that there was no evidence to support a finding of judicial misconduct. The complaint was dismissed as being outside of the jurisdiction of the Review Council and the file was closed.

CASE NO. 23-020/12

The complainant attended before the subject justice of the peace for the purpose of laying a private information. The complainant alleged that His Worship "refused to follow the criminal code as stated on the paper *"Commencing A Proceeding For A Private Information Under the Criminal Code of Canada"*. He quoted the paper as stating, *"As a citizen, you have the right to appear before a Justice of the Peace to lay charges against another person by swearing to an information. A justice of the peace must receive the information if it meets the statutory provision of the Criminal Code of Canada."* The complainant alleged that His Worship refused to follow the law of the land and "tossed me out of his office ... and threaten me without receiving the information".

The complainant expressed his view that judges of the Superior Court of Justice are corrupt and indicated that no-one was going to interfere with his *Criminal Code* complaints to protect their corrupt friends. He expressed allegations of corruptions about judges of the Superior Court of Justice. He alleged that, "this justice of the peace has demonstrated very clearly that Ontario, Canada stands for and supports Corruption, Fraud, Extortion, Obstruction of Justice, Fabricating Evidence." He indicated that "if this Justice of the Peace cannot follow the law of the land he must be removed."

The complaint was assigned to an investigating complaints committee. After reviewing the complaint, the committee requested a copy of the transcript and audio recording of the complainant's attendance in Intake Court before His Worship. Court Services confirmed that there was no record of the complainant's attendance on the audio recording of the proceedings in Intake Court that day. The committee invited and received a response from the subject justice of the peace.

Following a review of His Worship's response, which included a detailed account of the circumstances of the complainant's attendance that day, the complaints committee could understand why His Worship had not recorded the complainant's matter. Because of the complainant's demeanor, the justice of the peace had concerns for his personal safety and did not follow his usual practice of recording each appearance.

The committee noted that His Worship's decision not to proceed with receiving the information was based on an order of the Superior Court of Justice which stated that no further proceedings be instituted by the complainant in any court, except by leave of a

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judge of the Superior Court of Justice. The committee noted that if the complainant was unhappy with His Worship's decision, the proper way to proceed would be through legal remedies in the courts. This exercise of judicial discretion was a matter outside of the jurisdiction of the Review Council.

With respect to the general allegation of corruption, the committee found no evidence that His Worship was involved in any corruption.

In regards to the allegation that His Worship tossed the complainant out of his office and threatened him, the committee concluded that this did not happen.

For the aforementioned reasons, the complaints committee dismissed the complaint and closed its file.

CASE NO. 23-022/12

The complainant attended before the subject justice of the peace for the purpose of having subpoenas signed for a court matter that was taking place in a different jurisdiction. According to the complainant, Her Worship "refused to carry out the duties of her office". He stated that Her Worship wanted him to go to another city to get the subpoenas that he was requesting issued. The complainant alleged that when he explained the duties of her office and her jurisdiction to issue the subpoenas, Her Worship "called the police to her office and made a big scene out of the situation." According to the complainant, the police threatened him with charges and twisted his arm as they escorted him out of the building. The complainant requested that the Review Council obtain the audio recording of his appearance before Her Worship to further understand his concerns.

The complaint was assigned to an investigating complaints committee. The committee requested and reviewed the transcript and audio recording of the complainant's attendance. The audio recording included the complainant's attendance before Her Worship in the Intake Court (as reflected on the transcript), the discussion that occurred when court security asked the complainant to step outside of the Intake Court, and a conversation that followed between Her Worship, court staff and security about the events.

Following a thorough review, the committee found that Her Worship's decision to not sign the subpoenas was a matter of judicial discretion and did not constitute judicial misconduct. The committee found that Her Worship did not fail to perform her duties. The court record showed that Her Worship was not satisfied of the relevancy of the individuals whom the complainant wished to have subpoenaed. Her Worship also suggested to the complainant that he could go to the city in which his court matter was being heard to request the subpoenas. The committee concluded that Her Worship's decision was a matter outside of the jurisdiction of the Review Council.

The committee noted that the audio recording showed that Her Worship maintained her composure, even when challenged by the complainant, whose tone became more elevated towards the end of his attendance. The committee observed that Her Worship was in the Intake Court alone with the complainant. The record reflected that after Her Worship told the complainant that she had made her decision, he persisted, and she told him to leave. When the complainant wouldn't leave, Her Worship determined that it was appropriate to call for assistance. In the circumstances, the complaints committee found no evidence of misconduct in Her Worship's handling of the situation.

For the aforementioned reasons, the committee dismissed the complaint and closed its file.

CASE NO. 23-025/12

A letter containing allegations about the conduct of a justice of the peace was sent to a ministry official who forwarded it to the Review Council. The letter appeared to come from a person who had provided an initial, a last name and a city name. The name was typed and there was no signature. No other address or contact information was provided in the letter. The envelope in which it was sent to the ministry official had no return address.

The letter alleged that the justice of the peace engaged in certain activities. During the investigation phase of the complaints process, a person was interviewed who had the knowledge of alleged activities. She expressed her belief that her ex-husband had written the letter following their hostile divorce. His name was different from the one identified on the letter.

As part of the investigation, disclosure of the letter of complaint and the information obtained through the investigation were provided to the justice of the peace who was the subject of the complaint and he was invited to respond to the allegations. In his response, he raised the concern that the complaint was an anonymous complaint. His Worship provided information that investigation done on his behalf confirmed that there was no person with the name on the complaint letter who lived in the city indicated in the letter. He expressed his belief that the author was the witness' ex-husband.

The committee considered the question of whether the complaint was anonymous. The Review Council has previously determined, as is set out in its Procedures, that it has no jurisdiction over an anonymous complaint. The committee considered the particular circumstances of the case, including the lack of a mailing address and any contact information for the letter's author. There was evidence from the investigation that a person by the name stated in the letter did not exist in the stated city. There was uncontested evidence from the witness and from the justice of the peace that the author may have used a false name. The committee concluded that the letter containing the allegations was anonymous.

Two members of the committee concluded that a third party merely forwarding the letter to the Review Council without anything further did not alter the anonymous nature of the complaint. They considered that the ministry official provided no other information about the complainant or the allegations. The members noted that before a disposition is imposed under section 11 of the *Justices of the Peace Act*, a committee must be certain on a balance of probabilities that the complaint is not anonymous. The judicial disciplinary process is a means of accountability through which judicial officers are accountable to the public. The potential dispositions of a complaint are serious, including the possibility of a recommendation for removal from office. On the particular facts, the majority of the committee was of the view that the ministry official delivered the complaint but did not become a complainant. They concluded that the complaint should be dismissed on the basis that it was anonymous and out of jurisdiction.

One member of the committee dissented. The member was of the view that the ministry official who received the letter and took the step of forwarding it to the Review Council was a complainant to whom the Review Council could report, and the complaint was not anonymous.

The complaint was dismissed on the basis that a majority of the complaints committee found it to be anonymous and outside of the jurisdiction of the Review Council. The file was closed.

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CASE NO. 23-026/12

The complainant appeared in Intake Court to have criminal charges laid and later filed a complaint about the presiding justice of the peace who decided not to issue process. The complainant indicated that he had been arrested and held in custody, during which time a Staff Sergeant of the police force gave instructions to his subordinate not to address any of the complainant's requests for medications. The complainant felt that the Staff Sergeant was in violation of section 215 of the *Criminal Code of Canada* (Duty of Persons to Provide Necessaries of Life) and wished to commence a private information and have charges laid.

The complainant was informed that the Review Council has no jurisdiction over the conduct of a police officer. The Review Council's jurisdiction is limited to the review of the conduct of justices of the peace.

The complainant alleged that the justice of the peace "twisted and turned the Criminal Code 215 to prevent me from commencing a private information investigation into the facts…".

In the letter acknowledging receipt of his complaint, the complainant was informed that the Review Council had no jurisdiction to review or change the decision of the justice of the peace and that the review would be with respect to the conduct and behaviour of the justice of the peace. The complainant was advised that if he was unhappy with the decision of the justice of the peace, he may wish to seek legal advice to determine what legal remedies, if any, may be available to him.

The complaint was assigned to an investigating complaints committee. The committee requested and reviewed the transcript of the complainant's attendance before His Worship.

Following a thorough review of the transcript, the committee found that His Worship's decision to not issue process was a matter of judicial discretion and did not constitute judicial misconduct. The committee found no evidence of misconduct in His Worship's demeanour, behaviour and handling of the complainant's matter. In fact, the committee observed from the court record that His Worship was patient and polite in allowing the complainant to fully present his information. It was further found that His Worship spent a great deal of time on the matter and demonstrated a careful and thoughtful approach to

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the issues. The committee noted that His Worship advised the complainant to seek the assistance of a lawyer.

For the above reasons, the committee concluded that there was no judicial misconduct and dismissed the complaint and closed its file.

CASE NO. 23-027/12

The complainant attended before the subject justice of the peace in Intake Court for the purpose of laying private charges against four individuals. According to the complainant, Her Worship, in reviewing the first application, asked him what the accused had done and he told her that the woman whom he sought to charge had used a false affidavit. The complainant alleged that when he tried to hand Her Worship the paper where the false information was written, she refused to read it and told him that his matter belonged in family court. According to the complainant, Her Worship said he had to have a lawyer and insisted that he be represented. The complainant indicated that he repeatedly told Her Worship that he was laying charges and that she must deal with it. He alleged that she refused and called security to have him removed.

According to the complainant, Her Worship refused to hear anything of his applications and the police officer who attended threatened him with trespassing charges if he did not leave. The complainant believed that Her Worship should be punished for a denial of his rights. He alleged that she was biased and totally incompetent.

The complainant also alleged that the province was becoming a police state run by crooked judges, lawyers and police.

In the letter acknowledging receipt of his complaint, the complainant was informed that the Review Council had no jurisdiction to intervene in judicial proceedings or to review or change the decision of the justice of the peace. The complainant was advised that if he was unhappy with the decision of the justice of the peace, he may wish to seek advice to determine what legal remedies, if any, may be available to him.

The complaint was assigned to an investigating complaints committee. The committee requested and reviewed the transcript and the audio recording of the complainant's attendance before Her Worship.

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From its review of the court record, the committee found that Her Worship was professional and calm during the proceeding. She asked questions about the charges which the complainant wished to lay in order to understand the circumstances and the court proceedings associated with the persons he wished to charge. The committee noted that Her Worship tried to be helpful by explaining where there was another court proceeding involved, he needed advice and she could not give him advice, and he should consult a lawyer. The record reflected that Her Worship explained to the complainant that he did not have sufficient evidence and she was not able to deal with his matter without more detailed evidence to support criminal charges. Her Worship expressed the view that the matter belonged in family court. The committee found that after Her Worship gave her decision that she would not issue criminal process, the complainant would not accept her decision and would not leave the Intake Court. In the circumstances, the committee found it reasonable for Her Worship to call security for assistance in having the complainant leave Intake Court.

After a thorough review of the court record, the committee concluded that the complainant's main grievance was his disagreement with Her Worship's decision to not issue criminal process based on the evidence he provided. The committee found that Her Worship's decision was a matter of judicial discretion and did not constitute judicial misconduct. As noted above, the Review Council has no legislative authority to review the correctness of court decisions or to make orders in relation to legal remedies or proceedings. If a person seeks a determination as to whether a decision made by a judicial officer was correct, the proper way to proceed is through legal remedies in the courts.

With respect to the general allegation that the province was becoming a police state run by crooked judges, lawyers and police, the committee found that this was a general allegation unsupported by any evidence. The committee found no support for the allegations of bias and incompetence.

For the above reasons, the committee concluded that there was no judicial misconduct and dismissed the complaint and closed its file.

CASE NO. 23-028/12

The complainant filed a complaint with the municipal by-law office against his neighbour concerning continuous noise emitting from the neighbour's property. A Notice of Offence was issued by a by-law officer and the matter was contested by the accused. The complainant was a civilian witness called by the prosecution at the trial held before the subject justice of the peace.

The complainant advised that he had kept a "noise log" of the incidents with his neighbour. He indicated that he had brought his own handwritten notes to refer to as evidence during the trial. He stated that the by-law officer was permitted by His Worship to use his notes in order "to refresh his memory". When the complainant was asked why he wanted to use his own notes, he responded "to secure the conviction so that the noise violations don't continue". He stated that His Worship denied him permission to use his notes on the basis that the complainant did not "use the crucial words 'to refresh my memory'". Then, in his decision to dismiss the charge, His Worship referred to the fact that the complainant was "very confused" with respect to the dates when he gave his evidence.

The complainant contended that His Worship "curtailed my right to present my evidence in a thorough way from the outset of the proceeding based on my answer" about the purpose of referring to the notes. The complainant also noted that there were inconsistencies in the testimony of the accused and her witnesses. The complainant expressed that he was left with the perception "there was some bias on the part of [the] Justice of the Peace against allowing me my full right as a witness to present my evidence thoroughly".

The committee reviewed the complaint letter and requested and reviewed the court transcript of the trial. The court record showed that His Worship ruled that the complainant had to provide his evidence based on his independent recollection, as there was no evidence before the court that he needed his notes to refresh his memory. After carefully reviewing the court record, the committee concluded that the way in which His Worship applied the law in determining that issue, and the way in which he assessed the evidence of the witnesses were matters of judicial decision-making. As well, His Worship's decision to dismiss the charge was a matter of judicial decision-making. The committee noted that judicial discipline must respect constitutionally-protected judicial independence. If a person believes that a justice of the peace made a legal error in his or her decision-making, the proper way to proceed is through legal remedies in the courts, such as an appeal. Such matters are outside of the jurisdiction of the Review Council.

In the absence of any evidence of judicial misconduct, the committee dismissed the complaint as being outside of the jurisdiction of the Review Council and the file was closed.

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CASE NO. 23-029/12

The complainant was charged under the *Highway Traffic Act* for using a hand-held device while operating a vehicle. The complainant wished to contest the charge and attended court for his trial. The complainant stated that he "was forced to take an adjournment" when the court had insufficient time to hear all scheduled matters. The complainant indicated that he put his objection on the record, expressing his concern that he had taken time off work to attend court and that he was expected to take more time off to re-attend in order to have a trial. He stated that the presiding justice of the peace commented "we're all in the same boat". The complainant disagreed with this, stating that the other participants such as the prosecutors, police, etc. were all getting paid to re-attend but he was not.

The complainant also made allegations about the treatment and intimidation he felt from a colleague of the prosecutor.

In acknowledging the complaint, the Council informed the complainant that its jurisdiction does not extend to reviewing judicial decisions or reviewing the conduct of others in the justice system such as prosecutors or their support staff. It was explained that the Council's authority extends only to the review and investigation of complaints about the conduct of the justices of the peace.

The committee reviewed the complaint letter and reviewed the transcript of the complainant's court appearance. The committee found that the court record showed that Her Worship explained that the provincial offences courts have very heavy volumes and then said, "So it's a system problem. It's a problem we all face: prosecutors, clerks, justices of the peace and the public. I hear your frustration, I wish I had a good answer to give you, I don't. We all do the best we can, all of us, and invariably people are facing this all the time and they're losing work to come here to these courts." After reviewing the full transcript, the committee concluded that Her Worship patiently listened to the complainant's concerns and acknowledged his frustrations about having to re-attend another day for his trial and that, like other members of the public in a similar position, he was not getting paid to re-attend for his trial. The transcript showed that Her Worship provided a detailed explanation to the complainant as to the order in which court matters are typically addressed. She also explained that there are occasions when the court does not have sufficient time to hear all scheduled matters and must adjourn them to another day, and that it is a systemic issue.

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After careful review of the court record, the committee found that Her Worship handled the complainant's matter professionally and judicially. Having found no evidence of judicial misconduct, the committee dismissed the complaint and the file was closed.

CASE NO. 23-031/12

The complainant filed a complaint about the presiding justice of the peace arising from his trial for a parking offence.

The complainant alleged that His Worship "directed anger towards me" and his behaviour was "intimidating, aggressive, menacing, belittling and unprofessional". The complainant alleged that during his concluding remarks, His Worship described the complainant's conduct as "an abuse" which the complainant felt "falsely labelled my conduct and discredited my sincere attempt at defending my position in a professional and honourable way ...". The complainant advised that His Worship also raised the fact that the complainant failed to stand up when His Worship entered the courtroom and he viewed this as a sign of disrespect. The complainant tried to explain that it was against his religious convictions to stand. He believed that His Worship's presumption of disrespect may possibly be the reason for His Worship's anger during the trial.

The committee reviewed the complainant's letter and reviewed the transcript and audio recording of his appearance before His Worship.

Following its review of the court record, the committee found no evidence to support the complainant's allegations that His Worship was menacing or aggressive towards him. The committee did note that it appeared that His Worship exhibited impatience with the complainant from early in the proceeding. It appeared that this impatience impacted on the atmosphere in the courtroom during the motion and throughout the proceeding. The court record also showed that His Worship entered into a dialogue with him which had the tone of a confrontational debate. The nature of that dialogue resulted in the prosecutor raising a concern that His Worship was engaging in a back and forth question and answer period that suggested that the Court was no longer being an impartial adjudicator.

The committee observed that the court record showed that the justice of the peace interrupted the complainant and made comments such as, "You are wasting the Court's time. You are wasting your own time. You are wasting the officer's time. Now get on with it."

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The record confirmed that His Worship commented that the complainant did not rise when His Worship initially came into the court and after a brief recess. The complainant responded that, "That's against my religious convictions, sir." No explanation was sought by the Court on what those convictions were. When the complainant started to explain, he was interrupted by His Worship.

After its review of the court record, in particular the audio recording, the committee could understand why the complainant perceived His Worship to be angry and belittling.

The committee invited His Worship to respond to the complaint and he submitted a response in writing.

The committee could see from the response that His Worship had reflected upon his conduct and he recognized that there were some things that he could have done differently. However, it appeared to the committee that His Worship may not have fully appreciated the concerns about his conduct and how it was perceived by the complainant and by the prosecutor. Judicial officers must be always be mindful of how much their conduct plays a role in the level of confidence of the public in the judiciary.

The committee noted that a justice of the peace has a unique role as exemplar and guardian of the dignity of the court. The conduct and comments of a justice of the peace set the tone for the environment in the courtroom. It is always important for a justice of the peace to be aware of how his or her comments and conduct are viewed and understood by those appearing before him or her.

The committee noted that there is an obligation on every justice of the peace to maintain and uphold the high standards of conduct expected by the public so as to preserve the faith and trust that society places in the men and women who have agreed to become justices of the peace. The committee reminded His Worship of the preamble to the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* that have been approved by the Justices of the Peace Review Council which state:

> The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial

> office. All judicial officers are obligated to treat members of the public with courtesy and respect.

After considering the allegations, the court record and His Worship's response to the complaint, and with an objective of avoiding any similar instances in the future, the committee determined that the appropriate disposition was a letter of advice pursuant to section 11(15)(b) of the *Justices of the Peace Act*. In accordance with the Procedures of the Council, a committee will provide advice in circumstances where the misconduct complained of does warrant another disposition, there is some merit to the complaint and the disposition is, in the opinion of the committee, a suitable means of informing the justice of the peace that his conduct is not appropriate.

The committee reminded His Worship that the specialized language of the courts can act as a barrier. Even when litigants think they understand the terms, they may be incorrect and they may not understand what step they are supposed to take or refrain from taking. The justice of the peace may not be able to rely upon the litigant to know each of the procedural steps, to raise objections, to ask relevant questions, or to otherwise protect their due process rights. A justice of the peace may need to explain procedure simply, and create an environment in which the relevant facts and arguments are brought out.

The committee advised His Worship that in order to maintain confidence in the judiciary and in the administration of justice, every justice of the peace must be very mindful of each and every comment made, one's tone and manner in the courtroom. Every comment and the tone in which it is delivered has a role in the overall impression that is left with a member of the public about how justice is administered and in ensuring impartiality and fairness.

The committee reminded His Worship that when a justice of the peace asks questions, explains requirements of the law, or takes steps to move the case along in an even-handed manner applied to both sides, a perception of neutrality and fairness is better achieved. An impatient tone or a perceived unwillingness to fully hear an argument gives rise to a greater risk of a misinterpretation of a justice of the peace's motivation. Comments must be made with an appropriate level of courtesy and civility. The committee also advised that the court should not describe a defendant as "wasting time". Such a comment does not reflect the principle that everyone has a right to be heard in the courtroom.

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As indicated above, the complaints process through the Review Council is remedial in nature and, through the review of and reflection upon one's conduct, improvements are made as to how situations and individuals are treated and handled in the future. After the complaints committee provided its advice, the file was closed.

CASE NO. 23-032/12

The complainant filed a complaint about the presiding justice of the peace following his *Provincial Offences Act* trial. The complainant believed that he had presented a compelling case and raised more than reasonable doubt based on the evidence. He stated that a witness was allowed to testify despite not being in the country at the time of the incident that gave rise to the charge. Additionally, he alleged that Her Worship allowed "loud outbursts of laughter, snickering, etc. in the courtroom" without reprimanding the prosecution or quieting down the courtroom. He questioned, "Could this have been a pre-arranged outcome, all parties having been in KA-hoots, and formed a 'cue'?" He also questioned whether anyone could ever get a "fair-shake" in the local provincial courts. He alleged that according to some local lawyers, Her Worship "has a history and a pattern of always and consistently 'Ruling Against' the defendant regardless of the case and its merits – when brought before her Court". He also questioned why the decision was not made on the same day when the evidence was heard, why Her Worship made her decision on a later date, and why only he and the prosecutor were there on the return date to hear Her Worship's decision.

The committee reviewed the complaint letter and reviewed the transcripts of the complainant's trial and the return date a week later. The committee also listened to portions of the audio recording of the trial. Following its review, the committee found that the court record of the trial showed that Her Worship was courteous, helpful and patient, providing the complainant with an opportunity to participate and be fully heard. The committee found no evidence that the outcome was pre-arranged or that Her Worship had pre-determined the decision in the case. The fact that Her Worship reserved her decision for one week rather than rendering it immediately following the trial supported a conclusion that she wanted to carefully consider all of the evidence before making her decision. The committee noted that it was not uncommon for a judicial officer to reserve his or her decision until a subsequent date in order to deliberate upon the evidence in a trial.

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With respect to the complainant's allegation that according to some local lawyers, Her Worship had a history and a pattern of always and consistently ruling against defendants regardless of the merits of the case, the committee found that the court record showed that Her Worship listened to the evidence and decided the complainant's case on its merits.

The committee concluded that the primary basis for the complaint was the complainant's disagreement with Her Worship's decision to register a conviction against him. The committee noted that if the complainant was unhappy with the decision in his case, his proper recourse was to pursue legal remedies in the court. As well, if the complainant disagreed with the admissibility of evidence of a witness, the proper way to proceed was through his remedies in the courts. Such matters are matters of law outside of the jurisdiction of the Council.

With respect to the allegation that Her Worship allowed loud outbursts of laughter and snickering in the courtroom without reprimanding the prosecution or quieting down the courtroom, after careful review of the court record, the committee concluded that Her Worship handled the complainant's matter professionally and judicially. Having found no evidence of judicial misconduct, the committee dismissed the complaint and the file was closed.

CASE NO. 23-033/12

The complainant filed a complaint about the justice of the peace who presided over his *Provincial Offences Act* trial. The complainant alleged that His Worship's conduct was rude, unnecessary, biased and unprofessional throughout his trial which impeded his rights to a fair trial. The complainant alleged that His Worship cut him off without legal justification, did not let him make full unfettered submissions on the issues, and he felt that His Worship was dictating how he was to conduct himself and his cross-examination of the witness. He alleged that His Worship kept interfering and seemed like he wanted to hear only information that was favourable to him, "as if he had a predetermined bias and agenda against me". His allegations included the following:

1) His Worship pressured him to rush through the entire trial process while reminding him that it was a simple speeding ticket. He alleged that His Worship reminded him at eight times that he could not monopolize the court's time. If His Worship was

concerned about the time spent on a speeding ticket, he shouldn't have given a two hour dissertation/ruling on the *Askov* application.

2) The complainant was not permitted to fully question the officer due to "constant interference by His Worship". His Worship interfered when he wanted to make submissions about the police officer and his use of his notes.

3) His Worship interfered with his legal and constitutional rights to a fair trial. "I was ripped off from due process." He said it was as if His Worship "had it in for me from the beginning because no matter what I asked he ruled against me on every occasion." The complainant was of the opinion that His Worship "essentially railroaded me into a guilty judgment and I believe that was his mission to begin with."

4) His Worship permitted the prosecutor to fully argue but almost consistently cut off the complainant and on at least three occasions barred him from making any submissions.

5) The complainant stated that he was not permitted to use his video evidence.

6) The complainant didn't receive a copy of the section 11(b) ruling in writing.

7) His Worship "interfered with my legal right to record the court proceeding pursuant to section 136 of the *Courts of Justice Act*". His Worship was ignorant of the law and caused the complainant financial damages. There was no explanation for why His Worship usurped the law in this regard.

Overall, the complainant indicated that "...injustices was conducted that effectively caused me to lose my trial not because of the evidence but the continued misconduct of His Worship and awarding the municipal prosecutor a winning hand on a platter."

The committee reviewed the complainant's letter and reviewed the transcripts and portions of the audio recordings of his court appearances before His Worship.

Following its review of the court record, the committee found no evidence to support the complainant's allegations that His Worship was rude, belittling, biased, insulting or prejudiced. It was noted that his tone remained calm and he did not raise his voice. Although there was evidence that His Worship interrupted the complainant, limited his questions and made comments that a "simple" speeding charge should not become unnecessarily lengthy or complicated, the committee found His Worship's interventions and remarks appeared to be intended to maintain control of the proceeding rather than to interfere with the complainant's defence or his right to a fair trial. These actions were not found to constitute judicial misconduct in the context of the complainant's trial.

Contrary to the complainant's allegation, the court record did not establish that His Worship's conduct prevented the complainant from testifying. According to the transcript of the trial, His Worship invited the complainant to present evidence by asking, "You have any witnesses to call or any evidence to give, Mr. [complainant]?" The court record showed that the complainant was given the opportunity to present his defence; however, he declined.

The committee noted that the allegations that the complainant was not allowed to cross-examine or to use video evidence or a computer during the trial or to make submissions raised matters relating to His Worship's exercise of judicial discretion and decision-making powers which, without evidence of misconduct, were outside of the jurisdiction of the Review Council. If the complainant was unhappy about the decisions made by His Worship in his case, the proper way to proceed was through legal remedies in the courts. It was suggested to him that he may wish to seek advice from a lawyer or paralegal to determine what legal remedies may be available to him.

Having found no evidence of judicial misconduct, the committee dismissed the complaint and the file was closed.

CASE NO. 24-002/13

The complainant filed a complaint about the presiding justice of the peace when he went to court for a parking offence.

The complainant indicated that the prosecutor told him that he should plead guilty so that the justice of the peace would reduce the fine to a third of the amount owing. The complainant was surprised that the prosecutor was telling everyone to do this. He told her that he would plead not guilty and have a trial. He said that the justice of the peace first heard all of the guilty pleas and reduced their fines to a third of the amount. The complainant alleges that the justice of the peace was "colluding with the prosecutor to persuade people to plead guilty". According to the complainant, following the guilty pleas, only the complainant and one other matter remained for trial. The prosecutor requested a recess in order to speak with the complainant and the other individual. During the break, the prosecutor again told them to plead guilty and receive a reduced fine. The complainant chose to have a trial.

In court, when he said that he was pleading not guilty, His Worship allegedly commented "it would be in my best interest to plead guilty because I wouldn't have a chance at winning at trial." The complainant perceived that His Worship had already made up his mind before going to trial and his decision was prejudiced. The complainant indicated that during the trial, the by-law officer was recalling everything from memory and had no notes. In the end, His Worship decided that the prosecutor had proven the case and convicted the complainant. The complainant stated, "This court was a farce in the way the Justice conducted himself". The complainant believed that he was unfairly convicted where there was no evidence, and that "everyone should have a fair trial and shouldn't be coerced into pleading guilty." It appeared to the complainant that "the Justice and Prosecutor wanted to teach me a lesson because I did not go with the flow and went against their wishes even though I was right."

The complaint was assigned to a three-member committee for investigation and review. The committee reviewed the letter of complaint and reviewed the transcript of the complainant's trial as well as the audio recording of the entire tier of cases.

The committee noted that the general approach in calling a court list is to address brief matters first, including guilty pleas. Lengthier trial matters are usually held to the end of the court session. This practice is part of effectively managing cases and court time. The committee noted that on the day in question there were nine guilty pleas of the forty-nine matters scheduled for the tier. Others were either withdrawn because no officer was present or convictions were registered as the defendants failed to attend court. These brief matters were all dealt with prior to any trials being called.

The committee also noted that as a general principle of sentencing, a judicial officer can take a guilty plea into account as a mitigating factor in deciding whether to reduce the sentence, including fines. It was also noted that His Worship invited and considered submissions before reducing the fines. As well, the committee observed that the court record showed that the reduction in fines varied and were not always one-third of the set fine, as alleged by the complainant.

The committee found that the court record failed to confirm the alleged comments by His Worship that “it would be in the [complainant’s] best interest to plead guilty because [the complainant] wouldn’t have a chance of winning at trial”. The committee noted that the record showed that His Worship informed the complainant prior to the trial that the charge of parking is an absolute liability offence and provided a brief description of what that meant. The committee observed that the explanation given by His Worship may have given rise to a misunderstanding by the complainant that His Worship had already made up his mind to convict him. Although the explanation could have been clearer, the committee concluded that the comments by His Worship did not support a conclusion that His Worship colluded with the prosecutor to pressure the complainant or others to plead guilty or that His Worship had made up his mind on the decision before the trial.

With respect to the complainant’s allegation that the prosecutor and His Worship were teaching him a lesson for not “going with the flow” and by pleading not guilty, the committee found that there was no evidence to support this allegation. As well, after His Worship registered a conviction, he asked whether 30 days was sufficient time to pay the fine and granted three times the duration at the request of the complainant.

Following a thorough review of the court record, the committee found that the complaint was not supported by the evidence. The committee dismissed the complaint and closed the file.

CASE NO. 24-003/13

The complainant went to Intake Court to apply for a peace bond against someone whom he said was sending him harassing and threatening text messages. He said he signed in and waited to be heard. He alleged that a justice of the peace met him in the hallway outside of the Intake Court and showed considerable effort in discouraging him from exercising his right as a private citizen. He alleged that His Worship asked about any police involvement in the matter and made it clear he was not interested in hearing a statement of facts. After explaining to His Worship that he felt he was at risk, he asked if His Worship would take a moment to review the printouts of the threatening text messages. According to the complainant, His Worship said “I am not going to do that”. The complainant indicated that his complaint centred around His Worship’s steadfast refusal to even hear the facts of the case.

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The complaints committee reviewed the complainant's letter and the documents which he enclosed with the letter. The committee requested the transcript and audio recording of the complainant's appearance before His Worship. Court Services advised that they were unable to provide a transcript of the complainant's attendance at Intake Court. There was no audio recording available of the appearance at the courthouse. The committee noted that in some cases, even if the interactions between a person and a justice of the peace occurred outside of the Intake Court, they may still be heard on the audio recording made in the Intake Court. However, when the full audio recording of the Intake Court on that day was reviewed to see if there was any recording of the complainant's interactions with His Worship, none was found. Court staff reported to the committee that the audio recording for matters before His Worship in Intake Court on that date was incomplete.

As a further step of investigation, the complaints committee requested the Intake Court sign-in sheet. The complainant's name was on the Intake Court sign-in sheet, along with the complainant's request for a peace bond. His Worship's initials were also on the sign-in sheet as the justice of the peace on the complainant's matter.

Given the allegations which the complainant made about His Worship's interactions with him and the incompleteness of the record in Intake Court, the committee was of the view that it was necessary to invite a response from His Worship in order to get a more comprehensive understanding of events that occurred. In his response, His Worship indicated that he had no specific recollections of his interactions with the complainant. He explained his general practice when persons appeared before him to seek a peace bond. His Worship also confirmed that it is his practice to record all proceedings which take place in Intake Court and that he believed fairness demands this.

After considering all of the information gathered during its investigation, the committee noted that it is always preferable for a justice of the peace presiding in Intake Court to refrain from speaking outside of the courtroom to a person who seeks a remedy in that court, so that a court record can be made of any interactions with parties. It is important that a person who requests an appearance in Intake Court has a fair hearing and that they perceive that they have a fair hearing. The audio recording of each appearance by a person who seeks a remedy in that court plays a vital role in upholding that principle. The committee notes that when a justice of the peace commits a legal error, the recourse to a party is to seek a review or appeal by a higher level of court. The usual safeguard

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against error lies in the adversary system and appellate review. However, without a court record that shows the decision and the reasons for a decision, the safeguard of appellate or judicial review cannot be achieved.

Aside from appellate review, another important means of accountability of justices of the peace in our justice system is accountability for conduct. Judicial officers are held accountable for their conduct and when an allegation is made about their conduct, a full record of the court proceedings is a valuable piece of evidence that can show whether allegations are unfounded or founded.

The complaints committee noted that in this case, the complainant and the justice of the peace provided different versions of the events and without an audio recording, there was no independent record of the events. The committee was not able to make a determination with respect to the allegations or to conclude what actually occurred on a balance of probabilities.

For the above mentioned reasons, the complaints committee dismissed the complaint and closed its file.

CASE NO. 24-004/13

The complainant appeared before the subject justice of the peace to contest a red light camera infraction. The complainant alleged that Her Worship "presented bias during the proceedings, and did not afford me the right to submit evidence in support of my defence". She described Her Worship as "highly irritated that I would choose to plead not-guilty" and alleged that Her Worship's display of "body and facial language as I took the stand clearly communicated that she had a bias against me for pleading not guilty – she almost rolled her eyes; her irritation was palpable, and she appeared angry at the burden I was putting on her time (and her sensibilities)."

The complainant alleged that Her Worship had clearly made up her mind before the complainant gave her evidence and denied her natural justice by not affording her the right to be heard free of bias or the perception of bias. Further, the complainant alleged that Her Worship appeared to have no knowledge of the law and that she made no reference to the relevant section of the law under which she was charged. She stated that Her Worship did not acknowledge her argument of defence and acted as if she did not hear it. She alleged that Her Worship issued a verbal decision which was laden with personal judgments about the complainant's comportment.

She stated that Her Worship belittled her in her comments. The complainant stated that "the dismissive attitude and behaviour of the JP was so extreme that I felt the need to speak out on the record and remind her that I was merely exercising my rights as a citizen of Ontario and I had to ask her not to belittle me."

The committee reviewed the complainant's letter and reviewed the transcript and audio recording of her trial appearance before Her Worship.

Following its review of the court record, the committee found no evidence to support the complainant's allegations that Her Worship pre-decided the case or denied her the opportunity to be heard. Although the committee was unable to assess Her Worship's facial and body language, the committee noted that the audio recording revealed no evidence to support the complainant's allegations of prejudice, rudeness, bias or anger on the part of Her Worship. The committee noted from the court record that the complainant had acknowledged that the pictures tendered in evidence by the prosecutor showed her car in the intersection on a red light. However, she indicated that she was not driving the vehicle at the time and had medical evidence to prove it. The complainant had indicated that the Notice of Offence said that "the driver will be liable subject to limited exceptions" but she was unable, through her research, to define those limited exceptions.

The committee observed that Her Worship could have taken more time to explain to the complainant, a self-represented defendant, that a red-light camera infraction under the *Highway Traffic Act* can be laid under Section 144(18.1) against the owner of a vehicle or under section 144(18.2) against the driver. Her Worship could have explained that an offence under section 144(18.1) is an absolute liability offence and that this meant the complainant was liable if she was the owner of the vehicle. This would have assisted the complainant to understand why she was found guilty. However, the committee noted that in the circumstances, the failure to explain the sections of the *Act* and any potential defences was not judicial misconduct. A justice of the peace must balance the duty to assist self-represented defendants with the responsibility to remain an independent adjudicator who should not advocate for or provide legal advice to a defendant on how to defend his or her case.

The committee noted that the court record showed that after hearing the complainant give her evidence, Her Worship did refer to her manner as "very agitated and very uptight". The complainant then acknowledged being "anxious" but indicated that she was not agitated, and the court accepted that correction. In the circumstances, the committee concluded that Her Worship's comment was not an attempt to belittle or demean the complainant. The committee found no evidence on the court record that Her Worship belittled the complainant.

Having found no evidence of judicial misconduct, the committee dismissed the complaint and the file was closed.

CASE NO. 24-005/13

The complainant attended at the Intake Court wishing to file a private information. According to the complainant, the justice of the peace he spoke to would not provide his name when asked for it and he had no visible identification. The complainant questioned whether the man whom he saw was a real justice of the peace or an imposter. The complainant alleged that His Worship asked the complainant to give him the materials and to wait outside. The complainant told him he would not do this as he did not trust anyone and did not believe the justice of the peace was following proper procedure.

The complainant asked in his letter whether justices of the peace are required to have visible identification, and if not, whether he can ask to see their identification. The complainant also questioned what the proper procedure that a justice of the peace should follow in receiving a private information.

The committee reviewed the complainant's letter and requested the transcript and audio recording of the complainant's attendance before His Worship. Court Services staff advised that the complainant's interaction with His Worship did not occur within the Intake Court but happened instead in the doorway and hall. As such, they were not able to provide a certified copy of the transcript but because the recording machine in Intake Court did record the interactions between the complainant and the justice of the peace, they were able to provide a copy of the audio recording of the interaction. Court Services staff also confirmed the identity of the justice of the peace and that he was not an imposter. The committee reviewed the entire audio recording of the interaction between His Worship and the complainant.

Following its review of the court record, the committee found no evidence of judicial misconduct on the part of His Worship in his handling of the complainant's matter. The committee noted that it is common practice for a justice of the peace to ask that paperwork for private informations be provided for preliminary review before inviting the applicant to attend in the Intake Court. The committee found that the audio recording showed that after the complainant was asked to provide his materials for the justice of the peace to review, he decided to leave the courthouse and did not enter the Intake Court to pursue the matter.

On the question of whether visible identification on a justice of the peace is mandatory, the committee determined that this was a matter outside of the jurisdiction of the Review Council.

For the aforementioned reasons, the committee dismissed the complaint and closed its file.

CASE NO. 24-006/13

The complainant appeared before Her Worship at the Intake Court seeking to lay a private information. According to the complainant, Her Worship turned on a recorder and never told him to swear or affirm. She told him that he "could not criminally charge Judges for decisions they make". He indicated that a "civilized argument ensured and in the end she would not take my statement under oath."

The complainant questioned whether Her Worship was correct that "you cannot criminally charge Judges for decisions that they make, regardless of whether they deliberately did so with criminal intent?" He also questioned whether justices of the peace must wear robes and green sashes at all times, noting that some justices of the peace wear what appear to be I.D. tags around their necks. He also questioned why Her Worship was not wearing either a green sash or an I.D. tag and he therefore alleged that "the person representing Her Worship was an imposter."

The complainant indicated that regardless of whether or not it was indeed Her Worship, he was still "complaining about the refusal" to permit him to lay an information to have the judge charged.

The committee reviewed the complainant's letter and reviewed the transcript of his attendance before Her Worship. The committee confirmed through Court Services staff and the certified transcript that the complainant had appeared before Her Worship and not before an imposter. The committee determined that the issues of whether justices of the peace must wear mandatory identification and whether they must wear full judicial attire, including the green sash, when presiding in Intake Court were administrative matters outside of the jurisdiction of the Review Council.

Following its review of the court record, the committee found that Her Worship was patient throughout the matter, assisting the complainant and allowing him the opportunity to be heard. The committee found no evidence of judicial misconduct in Her Worship's consideration of his matter. The committee noted that Her Worship's decision to deny his application on the basis of her understanding that judges cannot be criminally charged for their decisions was a matter within her judicial discretion as an independent arbiter. If the complainant was unhappy with Her Worship's decision, he would need to pursue other legal remedies through the courts. The committee noted that the complainant's question about whether judges can be charged criminally was a request for legal advice. The Review Council has no jurisdiction to provide legal advice. The complainant was informed about the Law Society Referral Service where he could obtain the name of a lawyer or licensed paralegal who could provide a free consultation of up to 30 minutes to help him determine his rights and options.

The committee dismissed the complaint as being outside of the jurisdiction of the Review Council and the file was closed.

CASE NO. 24-007/13

The complainant attended the Intake Court wishing to lay an obstruction of justice charge against a police officer. He filed a complaint about the presiding justice of the peace alleging that His Worship never put him under oath, did not take his charges, did not give him his reasons for not taking the charges, and "simply left the room". The complainant alleged that His Worship did not do his job.

The committee reviewed the complainant's letter and reviewed the transcript and portions of the audio recording of the complainant's Intake Court appearance before His Worship.

Following its review of the court record, the committee found no evidence to support the complainant's allegations that His Worship failed to consider his matter. The record

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reflected that His Worship reviewed the complainant's private information and provided him with a full opportunity to present evidence in support of his application. The committee noted from the record that His Worship was patient and polite throughout. The court record confirmed that His Worship went out to think about the matter, and that he considered the complainant's request in the context of the requirements of the *Criminal Code of Canada*. The committee found that in the circumstances, it was not inappropriate to leave and return. Upon giving his decision, the committee noted that the complainant was interruptive and was not accepting of His Worship's ruling that a charge would not be laid, requiring court security to intervene. His Worship then left the Intake Court, allowing security personnel to escort the complainant out.

Having found no evidence of judicial misconduct, the committee dismissed the complaint and the file was closed.

CASE NO. 24-008/13

The complainant indicated that she appeared in court to deal with her 'disobey red light' ticket. She was not aware that she would have to appear in front of other people in a courtroom. When her matter was called, her full formal name that appears on her legal identification was used to address her. She went forward but told the court that she goes by a shortened version of her first name. According to the complainant, Her Worship "rudely retorted in front of everyone, 'I don't care what you go by, I want to know if you are the person stated on this document!" The complainant stated she does not agree with Her Worship's "degrading manners". The complainant indicated that she was humiliated by this treatment and hoped that her letter results in the justice of the peace treating people with dignity.

The committee reviewed the complainant's letter and reviewed the transcript and audio recording of the complainant's court appearance before Her Worship.

Following its review of the court record, the committee did not find Her Worship's tone and demeanour to be rude or degrading towards the complainant. The committee noted the legal requirement and importance of confirming the identity of individuals appearing before the court. The committee appreciated that the court's formality may have left the perception that Her Worship was being unfriendly or rude. However, the committee found no evidence that she was rude or that she was trying in any way to embarrass or degrade the complainant.

Having found no evidence of judicial misconduct, the committee dismissed the complaint and the file was closed.

CASE NO. 24-009/13

The complainant, who works with youth in the courts, filed a complaint about a justice of the peace arising from his decision to remand a first-time youth in detention despite the consent of the Crown Attorney to the youth's release with conditions. The complainant stated that the justice of the peace had disregarded the principles of the *Youth Criminal Justice Act*. The complainant indicated that he was bringing forward the complaint to ensure that His Worship was made aware of his responsibilities and limitations when it came to his use of detention of youth.

The complaints committee reviewed the complainant's letter and ordered and reviewed the transcripts of two court appearances by the youth on the day in question before His Worship. The committee also requested and received a copy of the Information that showed the history of the court appearances in the matter.

The committee noted that His Worship's decision to vacate the release order and remand the youth in custody was a matter of judicial decision-making outside of the jurisdiction of the Review Council. When a justice of the peace makes an order in good faith based on his view of the law and facts, his decision and the way that he determines the issues are not matters of conduct subject to the disciplinary process. Rather, they are matters related to the exercise of judicial independence subject to the review of a higher court.

For those reasons, the committee dismissed the complaint on the basis that the allegations were outside of the jurisdiction of the Review Council and closed the file.

CASE NO. 24-011/13

The complainant appeared before the presiding justice of the peace in relation to a charge for failing to stop at a red light. In his complaint, he outlined "how a crooked police

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officer, a mean spirited prosecutor and a likewise incompetent justice of the peace have combined their criminal talents to torture and defraud me of money with a phony (Red Light – Fail to Stop) charge, without evidence".

He alleged that prior to his trial, he witnessed all of the accused persons lining up to speak with the prosecutor and being offered reductions. He indicated that "out of us 40, thirty-nine accepted a guilty plea to a reduction" and commented that "the whole set-up is intimidation". The complainant elected to have a trial.

The complainant alleged that during the trial, the police officer perjured himself and the prosecutor repeatedly interrupted the complainant while he was presenting his defence. He said that although His Worship was not able to find him guilty of the red-light infraction, His Worship decided "to stick me with an amber light offence". The complainant advised that he had a second trial before the same justice of the peace where the complainant allegedly told the justice of the peace that he has no authority to charge him with an amber light infraction when he was not being found guilty of the red-light infraction. The complainant said that His Worship re-instated the red-light offence and the matter was ultimately heard by a judge. The complainant was upset with the whole process and the cost of having to deal with the matter in courts. He requested reimbursement of his costs.

In the Council's acknowledgement letter, the complainant was advised that the Council has no jurisdiction to review judicial decisions or deal with complaints about the justice system in general or the conduct of other justice system participants. Additionally, he was informed that the Council has no authority to award reimbursement of expenses to defendants. A complaint file was opened to review and consider the allegations about the justice of the peace.

The complaints committee reviewed the complainant's letter and requested the transcripts of the complainant's appearances before the justice of the peace, as well as transcripts of the related appeals. The committee confirmed through Court Services that there was only one trial before the justice of the peace. It was appealed and the complainant was acquitted.

Following its review of the court record of the trial before His Worship, the committee found no evidence of judicial misconduct in the manner in which His Worship conducted himself. With respect to the complainant's disagreement with His Worship convicting him of an amber light offence as a substituted offence to the original charge, the committee noted that was a matter of disagreement with how the justice of the peace applied the law and decided the case. The committee concluded that was a matter of judicial decision-making which was outside of the jurisdiction of the Council. The *Justices of the Peace Act* states that the complaints committee must dismiss a complaint if it falls outside of the Council's jurisdiction. The committee dismissed the complaint as outside of its jurisdiction and closed the file.

CASE NO. 24-012/13

The complainant attended in Intake Court before the subject justice of the peace in order to lay a private information against a Transit Special Constable. The complainant stated in his letter that Her Worship insisted that the officer was performing his duties and said she thought the complainant was exaggerating everything. According to the complainant, Her Worship asked him if the officer had beaten him up. After the complainant answered "no", Her Worship allegedly said "Oh, that's too bad" and then told him to leave. The complainant claimed that Her Worship violated his right to have a hearing.

The committee reviewed the complainant's letter and reviewed the transcript and audio recording of his Intake Court attendance before Her Worship. Following its review of the court record, the committee found that Her Worship was polite, patient and professional throughout the matter, allowing the complainant full opportunity to be heard. The court record did not support the complainant's allegation that Her Worship believed that he was exaggerating everything, nor did it support the alleged comments by Her Worship that it was too bad that the officer hadn't beaten him up. The court record reflected that Her Worship explained the reasons for her decision and then asked the complainant to wait outside while a copy of his information was being made for his records. The committee found no evidence of judicial misconduct in Her Worship's consideration of the complainant's matter or in her interactions with him.

The committee noted that Her Worship's decision to deny the complainant's application on the basis that the allegations and evidence did not support a criminal charge was a matter within her judicial discretion as an independent judicial officer. The decision of the justice of the peace is not within the jurisdiction of the Council to review.

For the aforementioned reasons, the committee dismissed the complaint and closed the file

CASE NO. 24-014/13

The complainant indicated that he attended court before Her Worship and "was simply acting as 'an individual providing legal services for and on behalf of a friend' as provided for in Section 5 of the Law Society of Upper Canada, By-Law #4." He indicated that he was not a lawyer or paralegal.

The By-law states, in part:

Acting for family, friend or neighbour

> *5. An individual,*
>
> *i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,*
>
> *ii. who provides the legal services only occasionally,*
>
> *iii. who provides the legal services only for and on behalf of a related person, within the meaning of the Income Tax Act (Canada), a friend or a neighbour, and*
>
> *iv. who does not expect and does not receive any compensation, including a fee, gain or reward, direct or indirect, for the provision of the legal services.*

According to the complainant, he "was confronted with a very harsh and aggressive reaction" from Her Worship." He alleged that she "did not even allow me to open my mouth and ordered me to sit down at the back of the courtroom." He also indicated that his friend, who was unfamiliar with the court system, felt intimidated by the aggressive behaviour of both the prosecutor and Her Worship and had no choice but to follow the orders. He advised that his friend, the defendant, was not permitted to consult with him in order to make a right decision. He alleged that she "...was coerced to plead guilty to a lesser charge while being clueless to what was happening."

It appeared to the complainant that the prosecutor and the justice of the peace were trying to get as many convictions as possible in order to generate the maximum amount of revenue. He expressed that "there has to be a difference between a communist suppressive regime and the government of Ontario". He expressed extreme disappointment with the treatment he received from the justice of the peace "whose main goal should be to uphold the law and justice, while teaching a lesson to the average people who appear before her in order to avoid further infractions."

The complaints committee reviewed the complainant's letter and requested and reviewed the transcript and audio recording of the proceeding before Her Worship. With respect to the allegation that Her Worship had rushed the defendant or coerced her to plead guilty to a lesser charge, the court record showed that the defendant had spoken with a prosecutor and she confirmed that she had understood what was offered to her. The prosecutor said on the record that she had been offered a resolution but that she could choose what to do. The record also showed that Her Worship clarified with the defendant that she understood her choice. The committee concluded that the defendant was not rushed or coerced to plead guilty.

Following its review of the court record, the committee had concerns about Her Worship's manner and tone when interacting with the complainant. The committee invited Her Worship to respond to the complaint.

In her response, Her Worship explained that she had misunderstood the complainant's relationship to the defendant and the capacity in which he sought to appear. She expressed her apology for her conduct towards the complainant. She indicated that in the future, she would endeavour to make all those who appear before her to assist family or friends feel respected for their involvement.

From her response, the committee could see that Her Worship had reflected upon her conduct toward and treatment of the complainant. However, it appeared to the committee that Her Worship may not have fully appreciated how the severity of her tone and abruptness may have been perceived by the complainant, the defendant and perhaps others in the courtroom.

The committee noted that there is an obligation on every justice of the peace to maintain and uphold the high standards of conduct expected by the public so as to preserve the faith and trust that society places in the men and women who have agreed to become justices of the peace. The committee reminded Her Worship of the preamble to the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* that have been approved by the Justices of the Peace Review Council which state:

> The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office. All judicial officers are obligated to treat members of the public with courtesy and respect.

After considering the allegations, the court record and Her Worship's response to the complaint, and with an objective of avoiding any similar instances in the future, the committee determined that the appropriate disposition was a letter of advice pursuant to section 11(15)(b) of the *Justices of the Peace Act*. In accordance with the Procedures of the Council, a committee will provide advice in circumstances where the misconduct complained of does not warrant another disposition, there is some merit to the complaint and the disposition is, in the opinion of the committee, a suitable means of informing the justice of the peace that her conduct is not appropriate.

In its advice, the committee referenced the importance of an individual having the right to exercise his or her choice to have a family member or friend provide assistance as permitted in accordance with the Law Society of Upper Canada By-law. To preserve public confidence in the administration of justice, justice must not only be done; it must be seen to be done. The committee urged Her Worship to always take the requisite time and care in assessing the relationship of individuals appearing as agent for the defendant to avoid any misunderstandings about their relationship with the defendant and their right to assist. The committee also reminded Her Worship that the demeanour and comments of a justice of the peace set the tone for the atmosphere in the courtroom. It is always important for a justice of the peace to be aware of how his or her comments and conduct are viewed and understood by those appearing before him or her.

The complaints process through the Review Council is remedial in nature and through the review of and reflection upon one's conduct improvements are made as to how situations are handled and individuals are treated in the future. Having provided Her Worship with advice, the committee closed its file.

CASE NO. 24-021/13

The complainant filed a complaint against the presiding justice of the peace arising from his trial on a speeding ticket. The complainant indicated that during the testimony of the police officer, he raised an objection and His Worship told him that he cannot raise any objection or interrupt when the Police officer was giving his testimony. The complainant alleged that His Worship interrupted him whenever he spoke. According to the complainant, His Worship said that "he runs the court and he does not have to listen to my grievances and threatens me that I do not know what powers he has." Further, the complainant alleged that His Worship stated that he would call security to maintain some order in the court, which the complainant interpreted as "basically indulging in intimidation tactics". He also alleged that the prosecutor interrupted him and that when he spoke to her, His Worship said that he could not speak to the prosecutor or interrupt her.

The complainant alleged that his rights to a fair trial were violated. He requested that he be permitted to initiate civil litigation against His Worship. He stated that threatening, intimidation and violation of his rights by His Worship was done at the instruction of the Attorney General's office "to convict all dark, black and coloured skin by hook or crook". He provided references to quotes about racism.

The complainant requested that His Worship be given the maximum punishment "as he not only failed in his duty to provide a free and fair trial, but has also violated my rights, abused his authority, threatened me, intimidated me, thereby doing something which is completely contrary to the nature of his duty." He requested that the Council direct the Court Office to release the audio recordings of his matter. He then provided excerpts on stories about police and government employees in India who were charged with and/or convicted of crimes.

In acknowledging his letter, the complainant was informed that the Council has no authority to direct the Court Office to release the recording of the hearing to him. The complainant was also informed that if he is unhappy with the decision, he would need to pursue legal remedies in the courts, as the Council has no jurisdiction to review or change decisions.

The complaint was assigned to a complaints committee for investigation and review. Before a final determination could be made on the complaint, the Review Council received confirmation that His Worship was no longer a justice of the peace. As he was no longer a justice of the peace, the Review Council had no jurisdiction to continue its complaints process in relation to the complaint submitted. The complaint file was administratively closed due to a loss of jurisdiction.

CASE NO. 24-023/13

The complainant filed a complaint about the conduct of the presiding justice of the peace arising from court appearances on a Provincial Offences matter.

The complainant indicated that he did not receive disclosure and had asked His Worship to dismiss his case. According to the complainant, His Worship refused. He alleged that he was treated poorly because he was an Afro-Canadian and that he was treated differently because he was black. He said that His Worship helped a white person in breaking the law, saying he would give him a break this time. He alleged that His Worship "has so much of hate against black people when I was in front of him, he never allowed the due process to work".

The complaints committee reviewed the complainant's letter and requested and reviewed the transcript of the complainant's appearance before the justice of the peace.

Following its review of the court record, the committee found that His Worship adjourned the matter so that the complainant could get disclosure. There was no evidence of judicial misconduct by His Worship in his interactions with the complainant. The committee found no evidence of mistreatment, nor any expression of hatred or cultural bias against the complainant.

With respect to His Worship's decision that he would not dismiss the charge against the complainant and his decision in relation to the other defendant's case, the committee noted those were matters of judicial decision-making which were outside of the jurisdiction of the Council. The *Justices of the Peace Act* states that the complaints committee must dismiss a complaint if it falls outside of the Council's jurisdiction.

For the aforementioned reasons, the committee dismissed the complaint and closed the file.

CASE NO. 24-024/13

The complainant was charged with a parking violation. He filed a complaint about the conduct of the justice of the peace who presided over his trial. He stated that he believed he was innocent but would not be appealing the decision given the cost, time, effort and expense to the court system. He still felt that he was wronged and he deserved a right to be heard.

The complainant indicated that at his trial, Her Worship denied him the opportunity to present his evidence. He indicated that he had taken photos of the spot and signage and had the photos and a video in a CD format. He called the courthouse in advance to make arrangements for viewing this evidence. He was told to "just bring along whatever you have". He stated that he believed the evidence to be exculpatory and Her Worship disallowed the evidence. He stated "I was denied the opportunity to present my evidence before the court and that is the focus of my complaint." He raised arguments that her Worship's decision violated provincial and federal statutes, his rights under the Civil Rules of Procedure, and his rights under the *Charter of Rights and Freedoms*. He alleged that Worship "disregarded the general principle of fundamental justice in common law" and she denied him a fair hearing.

He said that he made a motion for an adjournment to allow him time to present the documentation in a format acceptable to Her Worship. He alleged that his adjournment request was refused and Her Worship stated that this was the only opportunity he had to plead his case. The complainant alleged that he was forced to continue with his trial without "what I believe was exculpatory evidence". He believed that Her Worship's conduct was clearly prejudicial to his case.

The complainant alleged that Her Worship's behaviour exemplified a rush to judgment and did not represent the high standards of conduct expected of a justice of the peace.

The complaints committee reviewed the complainant's letter and requested and reviewed the transcript of the complainant's appearance before the justice of the peace.

Following its review of the court record, the committee found no evidence of judicial misconduct. The court record showed no evidence of prejudicial treatment of the complainant. The committee found that the concerns which the complainant raised centered around Her Worship's decision on the admissibility of evidence and her decision against granting an adjournment. Matters of judicial decision-making are outside of the jurisdiction of the Council. The Council has no discretion to act on complaints that do not fall within its jurisdiction. The *Justice of the Peace Act* states that a complaints committee must dismiss a complaint without further investigation if it falls outside of the Review Council's jurisdiction.

For the aforementioned reasons, the committee dismissed the complaint and closed the file.

CASE NO. 24-027/13

The complainant was a lawyer who appeared frequently at the local courthouse. He filed a complaint about a justice of the peace alleging that "over the past year and a half, the actions of Justice of the Peace [name redacted] have been nothing short of rude, arrogant and obnoxious, for his tone and behaviours towards me in particular has been reprehensible and unacceptable." The complainant alleged that His Worship's "persistent harassment and rude behaviour makes it difficult for me to work and carry out my duties as a criminal defence lawyer in the same setting as him, and has caused me great stress and anxiety and emotional discomfort."

The complainant expressed his belief that the animus towards him was rooted in an incident prior to His Worship's appointment when His Worship was a criminal defence lawyer and the complainant was acting in the capacity of Duty Counsel. The complainant believed that when His Worship was defence counsel, he was improperly attending the holding cells and "scooping" clients awaiting bail. The complainant alleged that when he confronted His Worship while he was defence counsel, His Worship responded by threatening him to the effect that he would "fucking punch me out" and "don't let me punch you out you fucking rookie".

The complainant alleged that since His Worship's appointment, His Worship "has bullied myself and attempted to bully articling students or newly called lawyers to the Bar." He indicated that His Worship's bullying tactics included raising his voice, rolling his eyes, acts of exasperations, disrespectful looks and comments, and facial contortion showing his displeasure of the complainant's presence in the courtroom. The complainant indicated that these actions had been brought to his attention by members of the public, clients, Crown Attorneys, court officers and court staff.

He categorized His Worship's actions towards him as "reprehensible", "dishonourable" and "disgraceful". He indicated that recently escalating degrading comments and behaviours towards the complainant had "crossed the line" and he felt compelled to file this complaint. He provided examples of four incidents.

The complainant indicated that one day he appeared before His Worship on two federal matters. With respect to the first matter, the complainant spoke for the accused (who was not present before the court) in circumstances where he was not yet retained. The accused had an intent to retain him. His Worship commented that since the complainant was not yet retained, a note must be left for Duty Counsel who would address the matter later that morning. The complainant did as instructed.

Later when the matter was called again, Duty Counsel appeared. His Worship commented that he wanted to issue a bench warrant for the arrest of the accused but at the request of the Federal Crown for a discretionary warrant, one was issued. The complainant felt that he should have been paged back to the courtroom, given his earlier attendance on the matter. The complainant alleged that "the fact that [His Worship] would actually want to put an accused in jeopardy of being arrested after knowing full well that the accused would not be present after representations made by myself earlier that day is an affront to his role and the administration of justice."

On the same date, the complainant became aware of a new matter involving a different accused. The complainant was retained by that accused on another charge and the accused had expressed his intent to retain him on this new charge by way of a legal aid certificate. The complainant appeared before His Worship on the matter and requested that it be remanded to the next day. The complainant alleged that His Worship responded with a facial contortion, advised that disclosure would not be available and was putting the matter over for four weeks. The complainant also alleged that when the complainant volunteered an explanation for his one day adjournment request, His Worship made further facial contortions and took a break in the middle of the complainant's submissions.

He said that as His Worship exited the bench, the complainant turned to exit the courtroom. Allegedly, His Worship commented to the effect that, "Mr. [complainant] is so disrespectful to the court, the record will note he walked away while I was on the bench." The complainant said that he had responded by explaining to His Worship, "You said you were taking a break".

The complainant alleged that "the fact that he chose to denigrate me in open court, on the record, and in front of members of the public is again unfortunate and shows his clear animus towards me and as importantly, leaves the impression with clients, or potential clients, that his hostility towards me will in turn lead to bad treatment of them."

On a later date, the complainant appeared before His Worship in relation to two matters. On the first matter, His Worship allegedly would not allow the complainant to speak to the matter as he had not yet been retained but the client had expressed his desire to retain him. His Worship allegedly addressed the accused directly and told him he must sit down and wait to be called up.

The complainant felt that the accused had followed proper procedures in contacting counsel before his attendance. The accused had work commitments later that morning and wished to have his matter dealt with in a timely fashion. The complainant advised that "not only did JP [name redacted] jeopardize my client's position at work, he most definitely embarrassed the client before a full courtroom".

The complainant indicated that the client called his office later and called into question the complainant's ability to represent clients given the negative remarks directed towards him by His Worship. The client inquired "whether the Justice of the Peace is going to have bias towards his case due to the aggression JP [name redacted] displayed to my client and I in the court that morning."

On the second matter on that date, the complainant appeared for the accused and alleged that when he addressed the matter, His Worship refused to allow him to remand the matter, despite him having put on the record that he was in discussions with senior Crown Attorneys regarding attempts at resolving the accused's matter prior to a trial being set. He indicated that he had requested that the matter be remanded to another courtroom for case management; however, His Worship "flat out refused my request and ordered Mr. [accused's name redacted] to set a trial. The complainant proceeded to ask His Worship on what authority he had to do so.

His Worship allegedly responded, "I am controlling the court and you are standing in the way of the proper functioning of the court and Crown Attorney in dealing with this matter". The complainant viewed His Worship's behaviour as "rude, spiteful and should not be allowed to manifest during the carriage of justice."

The complainant alleged that these incidents make it clear His Worship "wishes to abuse the inherent power granted to him as a JP to carry out a personal vendetta towards me." The complainant indicated that he had attempted to order the transcripts of the incidents but alleges that "it appears JP [name redacted] has chosen not to allow them to be released as I have not received them."

The complainant alleged that the incidents were serious in nature and his actions were a serious display of arrogance and workplace harassment.

The complaint was assigned to a complaints committee for review. The complaints committee reviewed the complainant's letter and reviewed the transcripts and audio recordings of the four incidents outlined by the complainant.

After careful review of the court records, the committee found no support for the complainant's allegations. Although the committee was unable to assess the allegations relating to His Worship's body language and facial expressions or contortions, the court record showed that the tone and manner of His Worship during these proceedings reflected a patient, professional and diligent approach to each matter. The committee found no evidence of rudeness, arrogance, animus or harassment by His Worship towards the complainant. There was no evidence of any inappropriate conduct of the nature alleged by the complainant. There was also no evidence that suggested that His Worship had a personal vendetta towards the complainant.

With respect to the allegation about His Worship's comments when the complainant turned and walked away, the committee noted that the court record showed that His Worship was still speaking and had not yet adjourned the court when the complainant walked away. His Worship commented on the complainant as being disrespectful for walking away before the court had addressed the matter. He then continued on to thank the complainant for his comments. The committee could understand why His Worship made the comments in the circumstances and found that this was not judicial misconduct.

The complaints committee noted that His Worship's decisions that he would not permit counsel to appear when he had not yet been retained, that he would issue a bench warrant, and his decisions in relation to adjournments were judicial decisions made in the course of His Worship's duties, not allegations of judicial misconduct. Matters of judicial decision-making are outside of the jurisdiction of the Council. With respect to the allegations about His Worship's conduct while he was a defence lawyer, the

Council had no jurisdiction over the conduct of a person before he or she became a justice of the peace. The Council has no discretion to act on complaints that do not fall within its jurisdiction. The *Justice of the Peace Act* states that a complaints committee must dismiss a complaint without further investigation if it falls outside of the Review Council's jurisdiction. The complaints committee dismissed these allegations as outside of its jurisdiction.

For the aforementioned reasons, the committee dismissed the complaint.

CASE NO. 24-031/13

The complainant, a lawyer, submitted a complaint on behalf of his client. The complainant indicated that most adherents of a group that he associated with wear head coverings as part of their religious beliefs. He stated that on the day in question, his client was wearing a head covering in court. He was asked to remove it and he told the presiding justice of the peace that the head covering was being worn for religious reasons. He was told to take it off or leave the court.

The complainant quoted from the transcript in his letter and provided a copy of the transcript, indicating that, "First, Justice of the Peace [name] concluded for reasons not apparent on the record that [redacted name]'s motivation for wearing head coverings was not just religious but was also political. Second, even assuming [redacted name]'s use of head covering was both religious and political. That does not make it any less deserving of respect."

The complainant alleged that His Worship has "casually disregarded a profoundly important constitutional right because he had a preconceived notion about [redacted name]'s innermost beliefs". The complainant also provided case law to support his argument for respecting religious beliefs.

The complaint was assigned to a complaints committee for review. The complaints committee reviewed the complainant's letter and reviewed the transcript provided by the complainant. After careful review of the court record, the committee found that His Worship was entitled to make a decision about the wearing of headgear in the courtroom. This decision was made in the course of His Worship's duties and did not constitute judicial misconduct.

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Matters of judicial decision-making are outside of the jurisdiction of the Council. The Council has no discretion to act on complaints that do not fall within its jurisdiction. The *Justice of the Peace Act* states that a complaints committee must dismiss a complaint without further investigation if it falls outside of the Review Council's jurisdiction. The complaints committee dismissed the complaint as outside of its jurisdiction.

CASE NO. 24-032/13

The complainant was a court employee working in the courtroom over which the subject justice of the peace was presiding on the day in question. She indicated that before court started, His Worship had asked her what time they should break if he wanted to get out early and they agreed on 11:30 a.m. She told the court officer that they would be taking the break at that time. At around 11:30, when there were no longer prisoners being brought into the prisoners' box in the courtroom, His Worship asked where the prisoners were. She indicated to His Worship that she had mentioned to the court officer that they might go for the break at 11:30 and that may be why he didn't bring any more prisoners to the court.

She alleged that His Worship berated her in front of her peers and others in the courtroom by saying, "This is my court, this is my court, and I make the decisions here not you." She states that he then said, "She told them not to bring up prisoners" in a condescending way. She alleged that people raised their eyebrows and were shocked at this display of arrogance and disrespectful behaviour. She indicated that she felt shocked and embarrassed.

The complainant said that as an experienced member of court staff, she felt that His Worship required training on harassment in the workplace. She alleged that he was rude and hostile towards her with no reason, and that no other justice of the peace had treated her with such malice and rudeness. She also referred to the municipal Human Rights and Anti-Harassment Policy and the *Ontario Human Rights Code*.

The complaints committee reviewed the complainant's letter and the transcript of the proceedings. They also listened to the audio recording of the proceedings.

The committee noted that the transcript showed that the justice of the peace did say to the clerk, "Okay, I run the Courtroom." He also stated, "The clerk is asking for a break and as indicated no one is to be brought up, I indicated to her that the Crown calls the list, it's my courtroom."

After listening to the audio recording, the committee found that His Worship's tone was not rude or condescending. He did not berate the complainant or raise his voice. There was no evidence of harassment of the clerk by His Worship. The committee noted that a justice of the peace has a responsibility to manage the courtroom. In the context of the events that occurred, the committee found no evidence of misconduct on the part of His Worship. The complaint was dismissed and the file was closed.

CASE NO. 24-043/13

The complainant and his nephew attended at the courthouse to speak with a justice of the peace in order to lay private charges against a police officer for assault and false arrest. The nephew, who was the victim of the alleged assault, attended before the subject justice of the peace. Following a brief attendance, the complainant indicated that his nephew exited the court advising that the justice of the peace was being unreasonable and had stated that it was too late to make a complaint and have charges filed. The complainant, who also wished to speak with the justice of the peace, advised that, rather being next he was made to wait, which he interpreted as intentional. Finally, the complainant was seen by His Worship and was told the same thing as his nephew. The complainant ordered the transcripts of both appearances before His Worship but advised that only his nephew's appearance was recorded. The complainant included a letter from the court trial coordinator to prove he did attend before His Worship.

The complainant believes that His Worship is a corrupt justice of the peace. He claims he was evasive and tried to convince them that it was impossible to have the officer charged as more than six months had passed from the time of the offence. He also believed that His Worship had either erased the recording or never recorded it in the first place, despite confirming that their conversation was being recorded.

The complaint was assigned to a complaints committee for investigation and review. Before a final determination could be made on the complaint, the Review Council received confirmation that His Worship was no longer a justice of the peace. As he was no longer a justice of the peace, the Review Council had no jurisdiction to continue its complaints process in relation to the complaint submitted. The complaint file was administratively closed due to a loss of jurisdiction.

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APPENDIX B

POLICY ON EXTRA-REMUNERATIVE WORK AND APPLICATIONS CONSIDERED

Note:
This version of the procedures reflects decisions of
the Review Council up to December, 2013.
For current procedures, please see the Review Council's website at:
www.ontariocourts.ca/ocj/jprc/policies-and-procedures/extra-remunerative-work/

Policy on Extra-Remunerative Work and Applications Considered

B

POLICY OF THE JUSTICES OF THE PEACE REVIEW COUNCIL RE: EXTRA-REMUNERATIVE WORK

CRITERIA & PROCEDURE FOR APPROVAL

1) Effective January 1, 2007, all justices of the peace, whether presiding or non-presiding, are required to seek the written approval of the existing Justices of the Peace Review Council before accepting or engaging in any extra-remunerative work, in accordance with section 19 of the *Justices of the Peace Act,* as amended January1, 2007.

s. 19; subs. 8(2)(e)

2) All such applications to the Justices of the Peace Review Council will be considered by the Review Council at the earliest possible opportunity and the justice of the peace will be advised of its decision, in writing.

Application Procedure

3) An application for such approval must be made by the justice of the peace to the Justices of the Peace Review Council, in writing, prior to accepting or engaging in other extra-remunerative work and must set out a detailed explanation of the activity for which approval is sought, an estimate of the time commitment required and the amount of the remuneration. The applicant must also address in his or her letter each of the criteria indicated below that will be considered by the Review Council.

4) This application must be accompanied by a letter from the relevant Regional Senior Justice of the Peace providing his or her opinion with respect to any concerns about potential impacts related to scheduling and the applicant's assignment of duties.

5) The Council looks at two aspects in relation to remuneration associated with the work. Firstly, the Council considers whether the work gives rise to any remuneration

to the applicant justice of the peace. Secondly, the Council considers that a justice of the peace is engaged in extra-remunerative work when that justice of the peace is a party to someone else's remunerative work. Once the Council has established whether there is any remuneration, the policy and criteria set out in the Council's Extra-Remunerative Policy are considered.

6) The following are some of the criteria which should be addressed by the applicant in the letter of application and which will be considered by the Review Council in assessing whether or not approval will be granted:

   a) whether there is an actual, or perceived, conflict of interest between the duties as assigned and the extra-remunerative activity for which approval is sought; *(examples of potential conflict of interest include: employment by government in any capacity related to the administration of justice, the courts or corrections, engagement in the practice of law, employment in a legal clinic or a law firm, etc.)*

   b) whether the nature of the activity for which the justice of the peace seeks approval will present an intrusive demand on the time, availability or energy of the justice of the peace and his or her ability to properly perform the judicial duties assigned;

   c) whether the activity for which the justice of the peace seeks approval is a seemly or appropriate activity in which a judicial officer should engage, having regard to the public perceptions of judicial demeanour, independence and impartiality.

The Council has noted that the criterion in paragraph c) above must be understood in the context of the public policy encapsulated in the legislative framework set out in the *Justices of the Peace Act* R.S.O. 1990, c. J.4, as amended and, in particular, in view of the amendments that resulted from the *Access to Justice Act,* 2006, S.O. 2006, c. 21. The amendments brought about a comprehensive reform intended to strengthen public confidence in a professional bench and in the justice system.

Having carefully considered the public policy underlying the current legislative framework, the objectives of the amendments underlying the *Access to Justice Act,* 2006, and the *Principles of Judicial Office of Justices of the Peace of the Ontario*

Court of Justice, the Review Council has determined that it would in general be unseemly for full-time presiding justices of the peace to be engaged in commercial extra-remunerative work.

The Review Council has approved some applications to extra-remunerative work by full-time presiding justices of the peace on an exceptional basis in limited circumstances where the activity was primarily non-commercial and had other intrinsic value from an educational, patriotic, religious or creative standpoint. In accordance with the Council's procedures, an applicant who seeks approval to engage in commercial activity should address the issue of why the application for extra-remunerative work should be approved as an exception to the general policy that full-time presiding justices of the peace should not engage in extra-remunerative work that is commercial in nature.

Additional Information

7) If upon its review of the application, the Review Council is not satisfied that there is sufficient information, the Review Council may request such additional information as the Review Council may deem necessary and relevant, including information from the justice of the peace, the Regional Senior Justice of the Peace or any other person.

Approval of Application without Conditions

8) If, upon its review of the application and any additional material, the Review Council is satisfied that there is sufficient information to approve the application, without conditions, the Review Council will approve the application. The applicant justice of the peace will be advised in writing of the decision of the Review Council, including brief reasons for the decision.

Opportunity to Respond to Concerns

9) If, upon its review of the application and any additional information, the Review Council has concerns about granting the application, the Review Council will provide a letter to the applicant justice of the peace setting out its concerns. The Review Council may also suggest conditions of approval to address those concerns.

10) The justice of the peace will be given an opportunity to respond to the concerns of the Review Council and to respond to any suggested conditions by sending submissions in writing to the Review Council. If the justice of the peace agrees with the conditions, he or she should respond to the Review Council confirming his or her agreement with the approval being contingent upon the conditions.

11) The justice of the peace will be given thirty calendar days to respond from the date of the letter from the Review Council expressing its concerns. If a response is not received from the applicant justice of the peace within that time, the Review Council members considering the request will be notified and a reminder letter will be sent to the justice of the peace. If no response is received within ten calendar days from the date of the reminder letter, the Review Council will proceed in the absence of a response.

Decision

12) The Review Council will consider the response of the justice of the peace, if any, in making its decision. The justice of the peace will be advised in writing of the Review Council's approval of the application and of the conditions, if any, upon which the approval is contingent. In the alternative, the justice of the peace will be advised in writing that the request has not been approved. Brief reasons will be provided for the decision.

No Authority to Order Compensation for Legal Costs

13) The Review Council does not have legislative authority to recommend or order compensation for costs of legal services incurred as a result of an application for extra-remunerative work.

Application Process in Private

14) Any meeting of the Review Council regarding applications for extra-remunerative work shall be conducted in private. Pursuant to section 8(18) of the *Justices of the Peace Act,* the Review Council has ordered that any information or documents relating to any meeting of the Review Council to consider an application to engage in extra-remunerative work are confidential and shall not be disclosed or made public.

subs. 8(18)

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Quorum of Review Council

15) The usual rules for composition and quorum apply to meetings for the purposes of considering applications for extra-remunerative work. The Chief Justice of the Ontario Court of Justice, or in his or her absence, the Associate Chief Justice Co-ordinator of Justices of the Peace, shall chair meetings held for the purposes of considering applications for extra-remunerative work. Six members of the Review Council, including the chair, constitute a quorum for the purposes of dealing with an application for approval of extra-remunerative work. At least half of the members present must be judges or justices of the peace. The chair is entitled to vote, and may cast a second deciding vote if there is a tie.

subs. 8(7),(8) and (11)

Annual report

16) After the end of each year, the Review Council shall make an annual report to the Attorney General on its affairs including a summary of each application for approval of extra-remunerative work received or dealt with during the year and the decision of the Review Council, but the report shall not include information that might identify the justice of the peace or the Region in which he or she presides.

subs. 9(7)

Amended at Toronto, June 4, 2010.

Policy on Extra-Remunerative Work and Applications Considered

APPLICATIONS FOR APPROVAL OF EXTRA-REMUNERATIVE WORK IN 2013

Applications for approval of extra-remunerative work are given File names starting with ER indicating the nature of the application, followed by a sequential file number and by two digits indicating the calendar year in which the file was opened (i.e., File No. ER-001/13 was the first application for approval in calendar year 2013).

Names of applicants are not included in the case summaries.

CASE NO. ER-24-001/13

The Council considered a request by a justice of the peace to teach an evening language class in a First Nations language which would run weekly from September 2013 to June 2014 in a First Nation community.

The approval was granted in this instance recognizing that the applicant was a *per diem* justice of the peace and that this would be an educational activity. The Council's approval of this extra remunerative activity was subject to the following conditions:

1) The Council's approval of the request must present no difficulties in fulfilling judicial assignments during the period of teaching.
2) Her Worship's availability to instruct must be subject to her primary responsibilities as a justice of the peace and as such must be undertaken at times when she is not otherwise assigned to judicial duties.
3) Her Worship must maintain distance in the completion of her teaching of this course from her role and responsibilities as a judicial officer, particularly in relation to avoiding any reference to her judicial position in the extra remunerative work activities.
4) Her Worship may accept remuneration for these services, but such remuneration must be the same as that paid to other instructors and be without regard to the position as a justice of the peace.

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5) The Review Council reserved the right to revisit the request and its decision should any relevant circumstances change.

CASE NO. ER 24-002/13

The Council considered an application by a justice of the peace for approval of extra-remunerative work teaching two courses on legal subjects at a college during the morning over Fall and Winter semesters. The approval of Council was granted in this instance after the Council confirmed with the Regional Senior Justice of the Peace that he supported the request. While this request was approved, it is the view and preference of Council that educational teachings by justices of the peace be engaged in during the evenings rather than during weekdays, so as not to present any potential impact on judicial responsibilities or pose issues relating to fulfilling scheduling obligations at a base court location. The administrator at the college confirmed that the courses were not offered in the evenings.

The approval was subject to the following conditions:

1) Any remuneration accepted for these services be the same as that paid to other instructors without regard to the position of a justice of the peace.

2) His Worship's availability to instruct must not impact upon his availability to fulfill his primary responsibilities as a justice of the peace during assigned hours. As such, his availability to instruct must be undertaken at times when he is not otherwise assigned to judicial duties and where he has requested either vacation or compensating time off. Council was of the view that non-presiding days should not be used for such purposes.

3) The Review Council reserved the right to revisit the request and its decision should any relevant circumstances change.

CASE NO. ER 24-003/13

The Justices of the Peace Review Council received an application from a justice of the peace to engage in extra-remunerative work as a Hearing Review Officer as advertised by a municipality as part of their move to the Administrative Monetary Penalty System process for the purpose of by-law enforcement under Part II of the *Provincial Offences Act*.

The Council approved the application in this instance recognizing that the justice of the peace was a *per diem* justice of the peace and on the basis that the commitment for the Hearing Review Officer position would be two days per week with the possibility of some weekend work. His Worship could still perform his *per diem* days as a justice of the peace. His Worship undertook that in his role as a justice of the peace, he would not accept any assignments to Provincial Offences Court matters in the municipality in which the Hearing Review Officer would work; nor would he sit in Intake Court in that city on matters where the moving party is the City.

The approval of the request was subject to the following conditions:

6) The Council's approval of the request must present no difficulties in His Worship fulfilling judicial assignments as a *per diem* justice of the peace during the period when he holds the position of Hearing Review Officer.

7) His Worship's availability to perform responsibilities as a Hearing Review Officer must be subject to his responsibilities as a *per diem* justice of the peace and as such must be undertaken at times when he is not otherwise assigned to judicial duties.

8) His Worship must maintain distance in the completion of his responsibilities as a Hearing Review Officer from his role and responsibilities as a judicial officer, particularly in relation to avoiding any reference to his judicial position or title in his extra-remunerative work activities.

9) His Worship may accept remuneration for these services, but such remuneration must be the same as that paid to other Hearing Review Officers and be without regard to the position as a justice of the peace.

10) The Review Council reserved the right to revisit the request and its decision should the Council become aware of any new information or any relevant circumstances change.

Policy on Extra-Remunerative Work and Applications Considered

CASE NO. ER 24-004/13

The Council considered an application for approval to engage in extra-remunerative activities performing at an International Music Festival. The applicant justice of the peace confirmed that she would not be receiving any remuneration from the sale of CDs of concerts in which she participated. She also indicated that she did not sell or allow downloading of her recordings.

The Council approved of the request in the particular musical events subject to the following conditions:

1) The Council's approval of the request must present no difficulties in fulfilling judicial assignments as a justice of the peace during these periods of time.
2) Her Worship's availability to participate and perform must be subject to her responsibilities as a justice of the peace and as such must be undertaken at times when she is not otherwise assigned to judicial duties.
3) Her Worship must maintain distance in her musical activities from her role and responsibilities as a judicial officer, particularly in relation to avoiding any reference to her judicial position in the advertising and informational materials related to these performances.
4) Her Worship could accept remuneration, but such remuneration must be without regard to the position of a justice of the peace.
5) The Review Council reserved the right to revisit your request and its decision should the Council become aware of any new information or any relevant circumstances change.

CASE NO. ER 24-005/13

The Council considered an application from a justice of the peace to teach at the Faculty of Law at a university on evenings for the winter term. The approval of Council was granted after the Council received confirmation from Regional Senior Justice of the Peace that approval of the request would present no difficulties in fulfilling judicial assignments during the period of teaching.

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Policy on Extra-Remunerative Work and Applications Considered

The approval was subject to the following conditions:

4) The terms and conditions of employment, including the remuneration, must be the same as those of other instructors without regard to the position of a justice of the peace.

5) Her Worship's availability to instruct must not impact upon her availability to fulfill her primary responsibilities as a justice of the peace during assigned hours. Her availability to instruct must be undertaken at times when she is not otherwise assigned to judicial duties and where she requested either vacation or compensating time off. Council was of the view that non-presiding days should not be used for such purposes.

6) The Review Council reserved the right to revisit your request and its decision should any relevant circumstances change.

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APPENDIX C

PRINCIPLES OF JUDICIAL OFFICE OF JUSTICES OF THE PEACE OF THE ONTARIO COURT OF JUSTICE

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Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice

> *"Respect for the Judiciary is acquired through the pursuit of excellence in administering justice."*

PRINCIPLES OF JUDICIAL OFFICE OF JUSTICES OF THE PEACE OF THE ONTARIO COURT OF JUSTICE

PREAMBLE

A strong and independent judiciary is indispensable to the proper administration of justice in our society. Justices of the peace must be free to perform their judicial duties without fear of reprisal or influence from any person, group, institution or level of government. In turn, society has a right to expect those appointed as justices of the peace to be honourable and worthy of its trust and confidence.

The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office.

The following principles of judicial office are established by the justices of the peace of the Ontario Court of Justice and set out standards of excellence and integrity to which all justices of the peace subscribe. These principles are not exhaustive. They are designed to be advisory in nature and are not directly related to any specific disciplinary process. Intended to assist justices of the peace in addressing ethical and professional dilemmas, they may also serve in assisting the public to understand the reasonable expectations which the public may have of justices of the peace in the performance of judicial duties and in the conduct of their personal lives.

Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice

1. THE JUSTICE OF THE PEACE IN COURT

1.1 Justices of the peace must be impartial and objective in the discharge of their judicial duties.

Commentaries:

Justices of the peace should not be influenced by partisan interests, public pressure or fear of criticism.

Justices of the peace should maintain their objectivity and shall not, by words or conduct, manifest favour, bias or prejudice towards any party or interest.

1.2 Justices of the peace have a duty to follow the law.

Commentaries:

Justices of the peace have a duty to apply the relevant law to the facts and circumstances of the cases before the court and to render justice within the framework of the law.

1.3 Justices of the peace will endeavour to maintain order and decorum in court.

Commentaries:

Justices of the peace must strive to be patient, dignified and courteous in performing the duties of judicial office and shall carry out their role with integrity, appropriate firmness and honour.

2. THE JUSTICE OF THE PEACE AND THE COURT

2.1 Justices of the peace should approach their judicial duties in a spirit of collegiality, cooperation and mutual assistance.

2.2 Justices of the peace should conduct court business with due diligence and dispose of all matters before them promptly and efficiently having regard, at all times, to the interests of justice and the rights of the parties before the court.

2.3 Reasons for judgment should be delivered in a timely manner.

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2.4 Justices of the peace have a duty to maintain their professional competence in the law.

Commentaries:

Justices of the peace should attend and participate in continuing legal and general education programs.

2.5 The primary responsibility of justices of the peace is the discharge of their judicial duties.

Commentaries:

Subject to applicable legislation, justices of the peace may participate in law related activities such as teaching, participating in educational conferences, writing and working on committees for the advancement of judicial interests and concerns, provided such activities to do not interfere with their primary duty to the court.

3. THE JUSTICE OF THE PEACE IN THE COMMUNITY

3.1 Justices of the peace should maintain their personal conduct at a level which will ensure the public's trust and confidence.

3.2 Justices of the peace must avoid any conflict of interest, or the appearance of any conflict of interest, in the performance of their judicial duties.

Commentaries:

Justices of the peace must not participate in any partisan political activity.

Justices of the peace must not contribute financially to any political party.

3.3 Justices of the peace must not abuse the power of their judicial office or use it inappropriately.

3.4 Justices of the peace are encouraged to be involved in community activities provided such involvement is not incompatible with their judicial office.

Commentaries:

Justices of the peace should not lend the prestige of their office to fund-raising activities.

APPENDIX D

HEARING RE: JUSTICE OF THE PEACE DONNA PHILLIPS

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JUSTICES OF THE PEACE REVIEW COUNCIL

IN THE MATTER OF A HEARING UNDER SECTION 11.1 OF THE JUSTICES OF THE PEACE ACT, R.S.O. 1990, C. J.4, AS AMENDED

Concerning a Complaint about the Conduct of Justice of the Peace Donna Phillips

Before: The Honourable Justice Paul M. Taylor, Chair
Regional Senior Justice of the Peace Kathleen Bryant
Ms. Cherie Daniel, Community Member

Hearing Panel of the Justices of the Peace Review Council

REASONS FOR DECISION

Counsel:

Ms. Marie Henein Henein Hutchison, LLP	Mr. Tim Price Little, Inglis, Price & Ewer, LLP
Presenting Counsel	Counsel for Her Worship Donna Phillips

Public Hearing Re: Her Worship Donna Phillips

INTRODUCTION

[1] As a result of a complaint made to the Justices of the Peace Review Council, the Council directed that a formal hearing be held pursuant to Section 11.1 of the *Justices of the Peace Act* concerning the actions of Justice of the Peace Donna Phillips. The particulars of the complaint are set out in the Notice of Hearing: (Appendix "A "to these Reasons). Evidence was heard on May 23 and 24, 2013. Submissions were made on June 20, 2013. Justice of the Peace Phillips, through her Counsel, agreed that if the particulars of the complaint are found to be true they would amount to judicial misconduct.

BACKGROUND AND OVERVIEW

[2] On March 30, 2012, Justice of the Peace Phillips was a passenger in her own car which was being driven by her daughter, Maryanne Kechego. Staff Sergeant William Berg of the London Police Service (L.P.S.) was on traffic patrol. Due to an initiative of the L.P.S., he was on the lookout for drivers who were running red lights. He testified that Ms. Kechego drove through a red light at Wharncliffe Road and Baseline Road in the City of London. He followed the car stopping it in a Beer Store parking lot. The car was about 20 metres off the roadway.

[3] There is no contest that over the course of approximately one hour that Maryanne Kechego misled Staff Sergeant Berg about her identity. What is disputed is that Staff Sergeant Berg says that Justice of the Peace Phillips actively assisted her daughter in the ruse.

[4] Justice of the Peace Phillips denies hearing her daughter falsely identify herself. She says that she was asked by Staff Sergeant Berg if she knew the driver and she replied "yes". No follow-up question was asked.

[5] She testified that near the end of the hour, Staff Sergeant Berg approached her and said that the driver was lying to him, that he knew that Her Worship Phillips was a justice of the peace, that he didn't want her to be involved but sought her assistance.

[6] Justice of the Peace Phillips stated that she approached her daughter and told her: "The Police say you are lying. I don't know what it is about, and I don't want to get in trouble". She testified that she urged her daughter to tell the truth. Her daughter, she says, began to cry and said there were outstanding warrants for her arrest.

[7] Ms. Kechego was arrested by Staff Sergeant Berg and Justice of the Peace Phillips immediately left the scene.

[8] The Parties agreed that:

1. On March 30, 2012, a vehicle was stopped in London, Ontario by Staff Sergeant William Berg.
2. The true identity of the driver of the vehicle was Mary Anne Kechego (also known as Mary Anne Phillips). Mary Anne Kechego is not known as KellyTitchner with a birth date of August 6, 1963.
3. The owner of the vehicle that was stopped is Justice of the Peace Donna Phillips. On March 30, 2012, Justice of the Peace Donna Phillips was a passenger in the vehicle.
4. Mary Anne Kechego's birth date is December 17, 1963.
5. Mary Anne Kechego is Justice of the Peace Donna Phillips' daughter.

ANALYSIS OF THE APPLICABLE LEGAL PRINCIPALS

Assessment of Evidence and the Burden of Proof

[9] The standard of proof for establishing judicial misconduct is the balance of probabilities. In *Re: Massiah* (JPRC, 2012), the Hearing Panel accepted that the Supreme Court of Canada rejected suggestions that the civil standard of proof (i.e., a balance of probabilities) had degrees of variance, the Panel wrote at paragraph 172:

> [172] The Supreme Court of Canada in *F. H. v. McDougall*, [2008] 3 S.C.R. 41 set out the standard of proof that is to be applied. At paragraphs 45 and 46, the Court wrote that:

> [45] To suggest that depending upon the seriousness, the evidence in the civil case must be scrutinized with greater care implies that in less serious cases the evidence need not be scrutinized with such care. *I think it is inappropriate to say that there are legally recognized different levels of scrutiny of the evidence depending upon the seriousness of the case. There is only one legal rule and that is that in all cases, evidence must be scrutinized with care by the trial judge.* (Emphasis added by the Panel.)
>
> [46] Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. In serious cases, like the present, judges may be faced with evidence of events that are alleged to have occurred many years before, where there is little other evidence than that of the plaintiff and defendant. As difficult as the task may be, the judge must make a decision. If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test. (Emphasis added)

[10] The Panel continued at paragraph 173:

> [173] The *McDougall* case put to rest the approach that had infiltrated decisions, including professional misconduct cases, regarding the standard of proof to be applied. Lord Denning had set out a "shifting standard" test in *Bater v. Bater*, [1950] 2 All E.R. 458 (C.A.) wherein the civil standard of proof (i.e. a balance of probabilities) had degrees of variance that were "commensurate with the occasion". In other words, the more serious the allegation, the closer the standard would move from the traditional civil standard of proof on the balance of probabilities to a point closer to the criminal standard of proof beyond a reasonable doubt.

[11] This Panel sees the statement "Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test" as not modifying the burden of proof ,but rather , an underscoring of the need to give clear and cogent reasons. (See *R. v. Sheppard*, [2002] 1 S.C.R. 869 at para. 55.)

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The Test for Judicial Misconduct

[12] Justices of the peace are judicial officers. All are members of the Ontario Court of Justice and perform significant judicial duties which impact on the people of Ontario. They preside in Provincial Offences Court judging cases involving alleged violations of Provincial Statutes such as: the *Highway Traffic Act*, the *Liquor License Act*, and the *Environmental Protection Act*. Justices of the peace conduct judicial interim release hearings and preside over criminal court assignment courts.

[13] The Justices of the Peace Review Council approved the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* (the "Principles") on December 7, 2007. The preamble to the Principles states that:

> "The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office."
>
> Section 1.2 of the Principles states that "Justices of the peace have a duty to follow the law."
>
> Section 3.1 of the Principles provides that "Justices of the peace should maintain their personal conduct at a level which will ensure the public's trust and confidence."

[14] In the *Report of a Judicial Inquiry Re: His Worship Benjamin Sinai*, released March 7, 2008, the Commissioner made the following comments regarding the important role that justices of the peace occupy in relation to the public perception of the judicial system:

> "It is clear that justices of the peace are very important judicial officers. Although they are not required to have formal legal training before their appointment, their decisions regarding bail, the issuance of search warrants and *Provincial Offence* matters seriously impact the liberty and privacy of those who appear before them. Indeed, for the vast

> majority of society who have contact with the court system, their first and only contact would be to appear before a justice of the peace."

[15] As Justice Hogan stated in the Commission of Inquiry into the conduct of His Worship Justice of the Peace Leonard Blackburn:

> "It is the justices of the peace who preside in court on matters such as parking tags, speeding tickets, by-law infractions, and *Provincial Offences*. These are the day-to-day type of "judicial" issues that confront most people. It is therefore quite probable that a great number of the public will form judgments of our justice system based on their experiences with a justice of the peace."

Report of a Judicial Inquiry Re: His Worship Benjamin Sinai (2008)

[16] All judicial officers are held to a high standard of conduct, of necessity this involves doing or refraining from doing things that a regular citizen not only is permitted to do, but encouraged to do. Examples of forbidden conduct are: engaging in partisan political activity, which is the democratic birth right of all Canadians except judicial officers, or actively engaging in fund raising activities. These are small prices to pay for the maintenance of our collective judicial integrity and independence. These principles are well-known to all judicial officers and form part of our compact with the public we serve. All judicial officers are expected to conduct themselves with honor and integrity.

[17] As a general rule, judicial misconduct may capture both judicial and extra-judicial conduct. In *Re: Baldwin*, the court considered the issue as follows:

> In *Moreau-Bérubé v. New Brunswick (Judicial Council)*, the Supreme Court discussed the tension between judicial accountability and judicial independence. Judges must be accountable for their judicial and extra-judicial conduct so that the public has [sic] confidence in their capacity to perform the duties of office impartially, independently and with integrity. ...

* * *

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Public Hearing Re: Her Worship Donna Phillips

> Paraphrasing the test set out by the Supreme Court in *Therrien* and *Moreau- Bérubé*, the question under s. 51.6 (11) is whether the impugned conduct is so seriously contrary to the impartiality, integrity and independence of the judiciary that it has undermined the public's confidence in the ability of the judge to perform the duties of office or in the administration of justice generally and that it is necessary for the Judicial Council to make one of the dispositions referred to in the section in order to restore that confidence.
>
> *Re: Baldwin* (2002), O.J.C. at p. 6

Application of the Principles to This Hearing

[18] After assessing the credibility of Justice of the Peace Phillips and Staff Sergeant Berg, we have come to the regrettable conclusion that we do not believe the evidence of Justice of the Peace Phillips. Regrettably because this leads us inexorably to a finding of judicial misconduct. Such a finding is always regrettable because judicial misconduct by one judicial officer is seen by the public as a failure of the judicial system in general, and may be perceived or interpreted as a deficiency in the selection and training of judicial officers. It constitutes a failure on the part of one individual jurist to conduct themselves in accordance with the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice*, and it ultimately erodes public confidence in the broader administration of justice.

[19] Much of Justice of the Peace Phillips' evidence makes no common or logical sense. She is an extremely experienced justice of the peace having served for two decades. She has presided over hundreds of *Highway Traffic Act* cases. She is so familiar with the traffic stop procedure that she begins to amass the documents that she knows the police will ask for even before Staff Sergeant Berg approaches her vehicle. The central issue as she well knows is the identity of the driver. This is the foundation of any *Highway Traffic Act* case.

[20] She insists that she was preoccupied and did not hear her daughter falsely identify herself as Kelly Titchner. Yet she agrees that she was only one foot away from her daughter as they sat in the front seat of the car. She agreed that the request for her daughter to identify herself came after she (Her Worship Phillips) produced an

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expired insurance card. She says that she couldn't hear most of the conversation, yet her explanation for why her daughter failed to stop, including that it was a yellow, not red, light mirrors what Staff Sergeant Berg says Kechego told him.

[21] She insisted that when she, her daughter, and Staff Sergeant Berg left the scene to go to the U Storage Self Storage Unit to get her daughter's licence, her only question was where are we going. She says her daughter said that's where her licence was. Section 30 of the *Highway Traffic Act* mandates that all drivers have their licence in their possession, and produce it for inspection. Justice of the Peace Phillips knew that her daughter had been driving around London because she had been with her. She knew that she had moved into an address on Wharncliffe Road months before yet no questions about why the license was in the storage unit. Surely elementary compassion, let alone parental concern, would dictate telling your child "not a good idea, you have to have your driver's license with you or you will get a ticket."

[22] She realized that this was no ordinary *Highway Traffic Act* investigation. It was taking far too long yet she didn't ask the simple question: is there something wrong, can I help? Her explanation that she had been taught to never ask questions, to only answer yes or no rings hollow. She didn't have to identify herself as a justice of the peace, just ask the question.

[23] Her suggestion that the only questions Staff Sergeant Berg asked her do you know her, (he says the question was how well do you know her), and do you know if she has a driver's licence only make sense in one context. That context is that Staff Sergeant Berg is under the belief that the driver is Kelly Titchner. It would be absurd to suggest that an experienced police officer attempting to establish the identity of the driver would leave the questioning in that form. He was the person who needed to know the driver's identity. How would this be advanced by satisfying himself that the passenger knew who the driver was?

[24] The most telling blows to Justice of the Peace Phillips' credibility occurred in cross-examination. She agreed that she knew on the drive out to the "U" Storage that Staff Sergeant Berg was not satisfied with her daughter's identification. The question is how? Her position in her evidence-in-chief was that although she was aware that there was a problem she wasn't aware of what it was. Indeed her evidence is that her daughter told her they were going to get her driver's licence. How does this

translate into her certainty, contrary to her earlier testimony, that the problem is identity? She testified that at the storage unit Staff Sergeant Berg asked for her help, and told her the driver was lying. Yet she fails to ask the logical question: about what?

[25] In cross-examination to the following questions, she gave the following answers:

> Q. Notwithstanding you know he's conducting an investigation into her identity? Right? Because you are not going to help him out, on your version of events?
>
> A. If he would have asked me, I would have told him.
>
> Q. But if he doesn't ask, you're not going to say?
>
> A. No. I'm just sitting there. Like I said, I just sat there and let him deal with her.
>
> Q. When you go and speak to your daughter, what do you tell her?
>
> A. I told her, "The officer told me he believes that you're lying, if you are lying Maryanne, you'd better tell him the truth."
>
> Q. Well you knew at this point she's lying, right?
>
> A. He told me she was lying.
>
> Q. And you knew she was lying about her identity?
>
> A. Yes.

[26] Later in her cross-examination, she confirms that she knew her daughter was lying about her identity when she approached her at Staff Sergeant Berg's request. The context is clearly that she knew when she went to tell her daughter to tell the truth, that Maryanne Kechego was lying about her identity. Fearful about her own involvement, she told her daughter that she did not want to get into trouble, and that she needed her daughter to tell her true identity. The only way that Justice of the Peace Phillips could have known that the issue was that her daughter was lying about her identity is if she heard her do it.

[27] We found Staff Sergeant Berg's evidence to be clear, concise and compelling. His evidence was both logical and consistent. As an example, the reason for not making up his notes was that he had to pick up his children and had partially changed his shift for this reason. He was thorough in his investigation, returning to check the spelling of the name Titchner, and confirming the date of birth that he had been given. He performed a series of checks and seemed genuinely concerned that the person who had identified herself as Titchner had been the victim of a bureaucratic error. All of this information concerning the checks is readily verifiable.

[28] Clearly he accepted that Justice of the Peace Phillips was a justice of the peace and that she was vouching for the driver. He was perfectly prepared to arrest and charge the driver with public mischief or obstructing a police officer because he was satisfied that he was being misled. It is only after he speaks to Justice of the Peace Phillips that he embarks on the fruitless trip to the storage unit. He was already pressed for time. He had to pick up his children and would not have taken this extra step but for Justice of the Peace Phillips' intervention. A less thoughtful and diligent officer might have simply arrested Titchner/Kechego and given her the *Highway Traffic* tickets. Staff Sergeant Berg seemed to be prepared to give her every benefit of the doubt.

[29] He was at pains to be fair, explaining that because his communication with Her Worship had been non-verbal, he asked her to give him verbal replies.

[30] He explained what arguably are deficiencies in his notes, by indicating, in our view accurately, his focus was on Kechego's behaviour. The participation of Justice of the Peace Phillips was a secondary concern at the time of her daughter's arrest.

SUMMARY AND CONCLUSION

[31] We find that Justice of the Peace Phillips actively assisted her daughter Maryanne Kechego in misleading Staff Sergeant Berg as to her true identity. We find that she:

(1) claimed that she did not know the driver well;

(2) that she claimed the driver was her niece,

(3) confirmed that the driver was Titchner, which she knew to be false.

[32] To her credit, Justice of the Peace Phillips ultimately prevailed on her daughter to tell the truth. Unfortunately by that time the judicial misconduct had occurred.

DATED at the City of Toronto in the Province of Ontario this 30th day of July, 2013.

HEARING PANEL:

The Honourable Justice Paul M. Taylor, Chair

Regional Senior Justice of the Peace Kathleen Bryant

Ms. Cherie Daniel, Community Member

APPENDIX "A"

COPY OF EXHIBIT ONE IN THE HEARING – NOTICE OF HEARING

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COPY OF EXHIBIT ONE

JUSTICES OF THE PEACE REVIEW COUNCIL

IN THE MATTER OF a complaint respecting
Justice of the Peace Donna Phillips
Justice of the Peace in the
West Region

NOTICE OF HEARING

The Justices of the Peace Review Council (the "Review Council"), pursuant to subsection 11(15)(c) of the *Justices of the Peace Act*, R.S.O. 1990, c. J.4, as amended (the "*Act*"), has ordered that the following matter of a complaint regarding the conduct or actions of Justice of the Peace Donna Phillips be referred to a Hearing Panel of the Review Council, for a formal hearing under section 11.1 of the *Act*.

It is alleged that you have conducted yourself in a manner that is incompatible with the due execution of your office and that by reason thereof you have become incapacitated or disabled from the due execution of your office. The particulars of the complaint regarding your conduct are set out in Appendix "A" to this Notice of Hearing.

The Hearing Panel of the Review Council will convene at the Justices of the Peace Review Council Boardroom, Suite 2310, 1 Queen Street East, in the City of Toronto, on Friday, the 15th day of February, 2013, at 9:00 a.m. in the forenoon or as soon thereafter as the Hearing Panel of the Review Council can be convened to set a date for the hearing into the complaint.

A justice of the peace whose conduct is the subject of a formal hearing before the Review Council may be represented by counsel and shall be given the opportunity to be heard and to produce evidence.

The Review Council may, pursuant to subsection 11.1(10) of the *Justices of the Peace Act,* dismiss the complaint after completing the hearing, with or without a finding that it is unfounded or, if it upholds the complaint, it may:

(a) warn the justice of the peace;

(b) reprimand the justice of the peace;

(c) order the justice of the peace to apologize to the complainants or to any other person;

(d) order that the justice of the peace take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;

(e) suspend the justice of the peace with pay, for any period;

(f) suspend the justice of the peace without pay, but with benefits, for a period up to 30 days; or

(g) recommend to the Attorney General that the justice of the peace be removed from office in accordance with section 11.2 of the *Justices of the Peace Act*.

You, your counsel or your representative may contact the office of Ms. Marie Henein, Henein and Associates, the solicitor retained on behalf of the Review Council to act as Presenting Counsel in this matter.

If you fail to attend before the Review Council in person or by representative, the Review Council may proceed with the hearing in your absence and you will not be entitled to any further notice of the proceeding.

January 17, 2013 Original signed
Marilyn E. King
Registrar
Justices of the Peace Review Council

To: Justice of the Peace Donna Phillips
c. Mr. Timothy Price, Counsel for Her Worship

APPENDIX “A”

PARTICULARS OF THE COMPLAINT

The particulars of the complaint regarding the conduct of Her Worship Phillips are set out below:

1. On March 30, 2012, you were in your vehicle as a passenger. Your daughter, Mary Anne Kechego was driving the vehicle and was stopped by the police for a traffic infraction. In the course of that investigation, you misled the police officer as to the identity of Ms. Kechego and your relationship with her, and were a complicit witness to Ms. Kechego misleading the officer;
2. Upon stopping the vehicle, the investigating police officer, Staff Sergeant Berg, attempted to obtain the identification (name and birth date) of the driver as well as the driver’s licence. During the course of this investigation, Ms. Kechego falsely identified herself as Kelly Titchner and provided a date of birth. You were present during Ms. Kechego’s initial conversation with the police officer which occurred when Ms. Kechego was seated in the car and your were in the passenger seat;
3. Staff Sergeant Berg ran the name and date of birth provided by Ms. Kechego through his computer. He was unable to locate the licence information that had been provided verbally by Ms. Kechego. He approached the vehicle again and asked Ms. Kechego for her name and birth date. She once again lied to the police officer and provided the same false identifying information. You were present in the passenger seat when this conversation occurred with your daughter;
4. The officer asked Ms. Kechego to step out of the car. He cautioned her about misleading him and advised that she could be charged with a criminal offence. Ms. Kechego once again maintained the false identification was her true identity and informed the officer that you were a justice of the peace and her aunt and could confirm her identity;
5. Staff Sergeant Berg then spoke to you and asked you to verify the identity of the driver. You falsely confirmed that Ms. Kechego was Kelly Tichner and further falsely confirmed that she was your niece;

6. Staff Sergeant Berg was not satisfied with the identification information. Ms. Kechego claimed that she could not produce her driver's licence because she had left it in a storage unit. The police officer told Ms. Kechego that he would follow her to the storage unit to retrieve the driver's licence. Further, he told Ms. Kechego in your presence that he would take her word that she was licenced, especially since this was supported by you;

7. You and Ms. Kechego drove to the storage facility together. At no time did you seek to correct the misinformation that you had provided to Staff Sergeant Berg regarding the identity of the driver and her relationship to you. Further, at no time did you correct the misinformation that you had witnessed your daughter provide to Staff Sergeant Berg;

8. At the storage facility, the owner confirmed that the driver did not have a rented storage unit nor did her friend. The officer once again spoke to you while you were sitting in the car and advised that he was certain that the driver was lying to him. He reminded you that you were a justice of the peace and needed to answer truthfully to him. He then asked you how well you knew the driver and you said not well;

9. Staff Sergeant Berg asked you to tell the driver that she needed to truthfully identify herself. You asked the officer to have an opportunity to speak to the driver and did so. After you spoke to Ms. Kechego, she admitted her true identity;

10. Ms. Kechego was in fact a suspended driver at the time of this incident and there were warrants outstanding for her arrest;

11. You did act inappropriately in misleading a police officer conducting an investigation as to the identity of your daughter, Ms. Kechego and/or your relationship to her, and were a complicit witness to Ms. Kechego misleading the officer; and,

12. The act or acts as set out in paragraphs 1 to 11, inclusive constitute judicial misconduct that warrant a disposition under section 11.1(10) of the *Justices of the Peace* Act.

Public Hearing Re:
Her Worship Donna Phillips

JUSTICES OF THE PEACE REVIEW COUNCIL

IN THE MATTER OF A HEARING UNDER SECTION 11.1 OF THE JUSTICES OF THE PEACE ACT, R.S.O. 1990, C. J.4, AS AMENDED

Concerning a Complaint about the Conduct of Justice of the Peace Donna Phillips

Before: The Honourable Justice Paul M. Taylor, Chair
Regional Senior Justice of the Peace Kathleen Bryant
Ms. Cherie Daniel, Community Member

Hearing Panel of the Justices of the Peace Review Council

DECISION ON DISPOSITION FOLLOWING A FINDING OF JUDICIAL MISCONDUCT

Counsel:

Ms. Marie Henein Henein, Hutchison LLP	Mr. Tim Price Little, Inglis, Price & Ewer LLP
Presenting Counsel	Counsel for Her Worship Donna Phillips

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APPENDIX D

Public Hearing Re: Her Worship Donna Phillips

INTRODUCTION

[1] As a result of a complaint made to the Justices of the Peace Review Council, a complaints committee of the Council investigated the allegations and directed that a formal hearing be held pursuant to Section 11.1 of the Justices of the Peace Act concerning the conduct of Justice of the Peace Donna Phillips. The particulars of the allegations are set out in the Notice of Hearing; (Appendix "A "to these Reasons). Evidence was heard on May 23 and 24, 2013. Submissions were made on June 20, 2013. Justice of the Peace Phillips, through her counsel, agreed that if the particulars of the complaint were found to be true, they would amount to judicial misconduct. On July30, 2013, we found that Justice of the Peace Phillips had actively misled Staff Sergeant William Berg of the London Police Service, who was investigating Her Worship's daughter, Mary Anne Kechego, in relation to an alleged violation of the *Highway Traffic Act*.

More specifically, we found that Her Worship:

(1) claimed that she did not know the driver well;

(2) claimed that the driver was her niece; and,

(3) confirmed that the driver was named Titchner, which she knew to be false.

Our findings lead us to a conclusion that Her Worship's actions constituted judicial misconduct.

At the time, when we made our finding of judicial misconduct we wrote:

> [18] After assessing the credibility of Justice of the Peace Phillips and Staff Sergeant Berg, we have come to the regrettable conclusion that we do not believe the evidence of Justice of the Peace Phillips. Regrettably because this leads us inexorably to a finding of judicial misconduct. Such a finding is always regrettable because judicial misconduct by one judicial officer is seen by the public as a failure of the judicial system in general, and may be perceived or interpreted as a deficiency in the selection and training of judicial officers. It constitutes a failure on the part of one individual jurist to conduct themselves in accordance with the *Principles of Judicial Office of*

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Justices of the Peace of the Ontario Court of Justice, and it ultimately erodes public confidence in the broader administration of justice.

[2] The decision that we have come to with respect to disposition is made with even greater regret. We find that the only appropriate disposition is to recommend, pursuant to section 11.1(10)(g) of the Justices of the Peace Act, that Justice of the Peace Phillips be removed from office. Her conduct in misleading Staff Sergeant Berg was so manifestly and profoundly destructive of the concept of the impartiality, integrity, and independence of the judicial role, that public confidence would be sufficiently undermined so as to render her incapable of executing the judicial office. (See the Canadian Judicial Council's *Report to the Minister of Justice Concerning Mr. Justice Paul Cosgrove of the Superior Court of Ontario*(2009) at para. 19). We use the term regrettably because of the consequences not only to the administration of justice but also to Justice of the Peace Phillips, who prior to this finding had a long career as a justice of the peace and who had acted as a role model to all women who had been disadvantaged generally and Aboriginal women in particular.

BACKGROUND AND OVERVIEW

[3] On March 30, 2012, Justice of the Peace Phillips was a passenger in her own car which was being driven by her daughter, Mary Anne Kechego. Staff Sergeant William Berg of the London Police Service (L.P.S.) was on traffic patrol. Due to an initiative of the L.P.S., he was on the lookout for drivers who were running red lights. He testified that Ms. Kechego drove through a red light at Wharncliffe Road and Baseline Road, in the City of London. He followed the car, stopping it in a Beer Store parking lot. The car was about 20 metres off the roadway.

[4] There is no disagreement on the part of Her Worship that over the course of approximately one hour that Mary Anne Kechego misled Staff Sergeant Berg about her identity. What is disputed is the evidence of Staff Sergeant Berg that Justice of the Peace Phillips actively assisted her daughter in the ruse.

[5] Justice of the Peace Phillips denies hearing her daughter falsely identify herself. She says that she was asked by Staff Sergeant Berg if she knew the driver and she replied, "Yes". No follow-up question was asked.

[6] She testified that near the end of the hour, Staff Sergeant Berg approached her and said that the driver was lying to him, that he knew that Phillips was a justice of the peace, and that he didn't want her to be involved but sought her assistance.

[7] Justice of the Peace Phillips testified that she approached her daughter and told her; "The Police say you are lying, I don't know what it is about, and I don't want to get in trouble." She testified that she urged her daughter to tell the truth. Her daughter, she says, began to cry and said there were outstanding warrants for her arrest.

[8] Ms. Kechego was arrested by Staff Sergeant Berg and Justice of the Peace Phillips immediately left the scene.

[9] Her Worship, Mr. Price and Ms. Henein agreed that:

1. On March 30, 2012, a vehicle was stopped in London, Ontario by Staff Sergeant William Berg.
2. The true identity of the driver of the vehicle was Mary Anne Kechego (also known as Mary Anne Phillips). Mary Anne Kechego is not known as Kelly Titchner with a birth date of August 6, 1963.
3. The owner of the vehicle that was stopped was Justice of the Peace Donna Phillips. On March 30, 2012, Justice of the Peace Donna Phillips was a passenger in the vehicle.
4. Mary Anne Kechego's birthdate is December 17, 1963.
5. Mary Anne Kechego is Justice of the Peace Donna Phillips' daughter.

[10] We ultimately found that Justice of the Peace Phillips actively assisted her daughter, Mary Anne Kechego, in misleading Staff Sergeant Berg as to her true identity. We found that she:

(1) claimed that she did not know the driver well;

(2) claimed that the driver was her niece; and,

(3) confirmed that the driver was named Titchner, which she knew to be false.

[11] To her credit, Justice of the Peace Phillips ultimately prevailed on her daughter to tell the truth. Unfortunately by that time, the judicial misconduct had occurred.

The Submissions of the Parties

[12] Mr. Price, who has acted for Her Worship throughout the hearing, has submitted that the penultimate disposition of a 30 day suspension without pay, coupled with remedial education, would restore public confidence in the administration of justice. This disposition, he submits, reflects the seriousness of the misconduct, yet still values the contributions of Justice of the Peace Phillips to the administration of justice. Prior to the finding of judicial misconduct, Justice of the Peace Phillips had served for 20 years, without any allegations of misconduct. She had risen from humble beginnings and has been a role model for all women who had suffered through adversity. Justice of the Peace Phillips, a member of the Oneida Nation of the Thames, is an active member of her community and is respected within the Aboriginal community at large.

[13] Ms. Henein, appeared before us as Presenting Counsel. Her role is analogous to that of *amicus curiae*. In accordance with the JPRC Procedures, her role is to operate independently of the Panel and assist the Panel by presenting the case against Her Worship so that the complaint is evaluated fairly and dispassionately to the end of achieving a just result. Presenting Counsel's duty is not to seek a particular disposition. Ms. Henein has listed a number of factors which we might wish to consider in determining the appropriate disposition:

(i) The conduct of the justice of the peace has significantly shaken the confidence of the public and the police. The finding that a justice of the peace, who routinely presides over traffic offences and is required to adjudicate the issue of credibility, would actively mislead a police officer conducting an investigation is a significant finding;

(ii) The misconduct falls within the spectrum of the most grave findings of judicial misconduct;

(iii) The justice of the peace has had a previously unblemished judicial career;

(iv) The conduct before this Honourable Panel relates to a single incident and does not display a course of conduct. It was, however, sustained over the course of an hour;

(v) Although the justice of the peace has made no submissions with respect to the applicability of *Gladue*[1] and *Ipeelee*[2] principles regarding the relevance of the justice of the peace's Aboriginal status in the context of penalty in a regulatory hearing, some guidance may be taken from *Law Society of Upper Canada v. Terence John Robinson*, 2013 ONSLAP 18 at para. 72, 75 and 78;

(vi) In giving her evidence, Her Worship showed no acknowledgement of her actions, nor did she demonstrate either remorse for her actions or an understanding of the serious concerns about such conduct on the part of a justice of the peace; and,

(vii) Misconduct of this nature and the disposition imposed to address the misconduct affect the public's perception of integrity of and respect for the judicial system as a whole and the confidence the public places in the institution and its members, not just the perception of this justice of the peace.

Analysis of the Applicable Legal Principles

[14] The Panel agrees with the submission of Presenting Counsel that while justices of the peace are not judges, they are judicial officers. They are accordingly subject to the same standard of conduct as judges. The case law makes no apparent distinction. Indeed, it would be anticipated that to members of the public, judges and justices of the peace engender the same respect and expectations in respect of their conduct.

[15] Pursuant to Section 11.1 of the *Justices of the Peace Act,* this Panel has a range of dispositions available to it. We may:

(a) warn the justice of the peace;

(b) reprimand the justice of the peace;

---

[1] *R. v. Gladue* 1999 CanLII 679 (SCC), [1999], 1 S.C.R. 688

[2] *R. v. Ipeelee*, 2012 SCC 13 (CanLII), 2012 SCC 13

(c) order the justice of the peace to apologize to the complainant or to any other person;

(d) order that the justice of the peace take specified measures, such as receiving education or treatment, as a condition to sit as a justice of the peace;

(e) suspend the justice of the peace with pay, for any period;

(f) suspend the justice of the peace without pay, but with benefits, for a period of up to thirty days; or

(g) recommend to the Attorney General that the justice of the peace be removed from office in accordance with section 11.1 of the *Act*.

[16] Our task is guided by the explanation articulated in *Re Baldwin* (2002, OJC) of the progressive disciplinary approach to judicial discipline. The Panel wrote:

> It is only when the conduct complained of crosses this threshold that the range of dispositions in s. 51.6(11) is to be considered. Once it is determined that a disposition under s. 51.6(11) is required, the Council should first consider the least serious - a warning - and move sequentially to the most serious - a recommendation for removal - and order only what is necessary to restore the public confidence in the judge and in the administration of justice generally. (Emphasis added)

[17] In *Re Douglas* (2006, OJC) at para. 5, the Panel referred to *Re Baldwin*. The analysis of the case law could be summarized in the following principles that apply in considering the appropriate disposition:

(i) The Hearing Panel should first consider the least serious disposition and move sequentially to the most serious;

(ii) The disposition must restore the public confidence in the judicial officer; and,

(iii) The disposition must restore the public confidence in the administration of justice generally.

[18] In *Re Chisvin* (2012, OJC), the Panel provided a list of factors relevant to the assessment of an appropriate disposition for judicial misconduct at para. 38 that also apply in considering the misconduct of justices of the peace:

(i) Whether the misconduct was an isolated incident or evidenced a pattern of misconduct;

(ii) The nature, extent and frequency of occurrence of the acts of misconduct;

(iii) Whether the misconduct occurred in or out of the courtroom;

(iv) Whether the misconduct occurred in the judicial officer's official capacity or in his or her private life;

(v) Whether the judicial officer has acknowledged or recognized that the acts occurred;

(vi) Whether the judicial officer has evidenced an effort to change or modify her conduct;

(vii) The length of service on the bench;

(viii) Whether there have been prior complaints about this judicial officer;

(ix) The effect the misconduct has on the integrity of and respect for the judiciary; and,

(x) The extent to which the judicial officer exploited his or her position to satisfy his or her personal desires."

Clearly these are all appropriate factors to be considered; however, they are not to be viewed in a hierarchical order. A single act of misconduct may wipe out years of meritorious service.

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[19] Lastly, it must be born in mind that our role is remedial rather than punitive as Justice Gonthier wrote in *Ruffo v. Conseil de la Magistrature,* [1995] 4 S.C.R. 276 at para. 68:

> The Comité's role in light of these statutory provisions was accurately described by Parent J., at p. 2214:
>
> > The Comité's mandate is thus to ensure compliance with judicial ethics in order to preserve the integrity of the judiciary. Its role is remedial and relates to the judiciary rather than the judge affected by a sanction. In this light, as far as the recommendations the Comité may make with respect to sanctions are concerned, the fact that there is only a power to reprimand and the lack of any definitive power of removal become entirely comprehensible and clearly reflects the objectives underlying the Comité's establishment: not to punish a part that stands out by conduct that is deemed unacceptable but rather to preserve the integrity of the whole.

[20] Central to our analysis is the concept of judicial integrity expressed in the *Report of the Canadian Judicial Council to the Minister of Justice Concerning the Honourable Paul Cosgrove*, supra, where the Council wrote:

> Public confidence in the judiciary is essential in maintaining the rule of law and preserving the strength of our democratic institutions. All judges have both a personal and collective duty to maintain this confidence by upholding the highest standards of conduct.
>
> *Report of the Canadian Judicial Council to the Minister of Justice Concerning the Honourable Paul Cosgrove of the Superior Court of Justice of Ontario,* supra., at para. 1

[21] In *Re Douglas*, supra, the Panel wrote at para. 8-9:

> [8] Based on *Re: Baldwin* and *Re: Evans*, the test for judicial misconduct combines two related concerns: (1) public confidence; and (2) the integrity, impartiality and independence of the judge or the administration of justice.

The first concern requires that the Hearing Panel be mindful not only of the conduct in question, but also of the appearance of that conduct in the eyes of the public. As noted in *Therrien*, the public will at least demand that a judge give the appearance of integrity, impartiality and independence. Thus, maintenance of public confidence in the judge personally, and in the administration of justice generally, are central considerations in evaluating impugned conduct. In addition, the conduct must be such that it implicates the integrity, impartiality or independence of the judiciary or the administration of justice.

[9] Accordingly, a judge must be, and appear to be, impartial and independent. He or she must have, and appear to have, personal integrity. If a judge conducts himself, or herself, in a manner that displays a lack of any of these attributes, he or she may be found to have engaged in judicial misconduct.

Application of the Principles to This Hearing

[22] Our analysis begins with the ten (10) factors outlined in *Re Chisvin*, supra. As might be expected a number of the factors militate in favour of Justice of the Peace Phillips, some are neutral and some are aggravating. Among the mitigating factors are that this was an isolated incident which occurred over the course of approximately an hour. Prior to the incident, Her Worship had served as a justice of the peace for over 20 years with an unblemished record. Her counsel filed a number of letters of support from leaders of the Aboriginal community and some from members of the Bar. They praised Her Worship for her service to the community. It is clear that Justice of the Peace Phillips is a respected member and role model in the Aboriginal community.

[23] While the activity occurred outside of the courtroom and in Her Worship's private capacity, her actions were inextricably bound up with her role as a justice of the peace. Staff Sergeant Berg recognized Her Worship; he clearly accepted and placed greater value on what she was saying to him because she was a justice of the peace. He did things that he would not have otherwise done because of Her Worship's position. What occurred underscores the concept that there is often no

dividing line between the personal and professional life of a jurist. These factors have to be seen as aggravating the conduct.

[24] Justice of the Peace Phillips has not acknowledged any wrongdoing on her part. Her position clearly is that she did nothing wrong. We disagree and we found her to be an incredible witness. Her lack of acknowledgement or contrition is not an aggravating factor. It is simply a lack of a mitigating factor. Occasionally an acknowledgement of wrong-doing may greatly mitigate; for example, in *Re Chisvin*, supra, there was an immediate recognition of the wrongfulness of the actions, immediate rehabilitative efforts, coupled with an immediate apology. Letters of support including from several from judicial colleagues characterised the behaviour as an aberration, (see paras 42-47 of the Hearing Panel's decision in that case).

[25] We now turn to the last two factors, the effect on the integrity of and respect for the judiciary, and the extent to which Her Worship exploited her position for personal gain. Justice of the Peace Phillips' behaviour struck at the very heart of judicial integrity. All Canadians are expected to respect and follow the law. By her actions, Justice of the Peace Phillips failed to meet that minimal standard. This was not a case which required a nuanced analysis of the facts; Justice of the Peace Phillips lied to a police officer actively engaged in an investigation.

[26] It is such a basic concept that judicial officers are expected to obey the law that it is difficult to fathom how remedial education could address the restoration of public confidence. The average right thinking Canadian fully appraised of the circumstances would be, in our view, stunned at the suggestion that judicial officers, who are expected to be above reproach, would need to be "educated" that they should obey the law. While Justice of the Peace Phillips was not going to gain directly because of her actions, she was going to gain. She relied heavily on her daughter to act as a driver, and to assist her in her community ventures. This came to a crashing halt with her daughter's arrest.

[27] While Justice of the Peace Phillips has served for over twenty years without blemish and has acted as a role model to others in her community, how could there be any confidence in her ability to perform her judicial duties on an ongoing basis? The vast majority of the work of justices of the peace involves the assessment of the credibility of police officers on *Provincial Offences Act* cases, on judicial interim

release hearings, and on search warrant applications. Justices of the peace must, like all judicial officers, make findings of credibility. This has to be done fearlessly and without favour. Given the nature of the misconduct, how could the public have any confidence that this would occur in matters presided over by Her Worship in the future? Inevitably, there would be questions. Each time Her Worship rejected the evidence of a police witness, would there be a taint or a lingering suspicion that her decision-making had been influenced by the fact that a police officer gave evidence against her at this hearing? Conversely, would it be perceived that Her Worship may favour the police to counter any belief that she may be disposed against the police because of what happened in this hearing?

[28] No matter how Her Worship rules, the administration of justice would suffer, because there would be an inevitable deflection into an analysis of the possibility of partiality of Justice of the Peace Phillips, rather than confidence in the quality of her decision-making. The course of justice would essentially be hijacked, focusing on concerns about the judicial officer rather than certainty that justice has been done in the case itself. This cannot be allowed to occur.

[29] The Panel has considered the submissions of Her Worship's counsel that her situation is analogous to that of Justice of the Peace Paul Welsh, who pled guilty to and was granted an absolute discharge for the offence of attempting to obstruct the course of justice. We find that *Re Welsh* (2009, JPRC) is not a binding precedent; it represents a unique disposition based on unique and distinguishable facts. Among the distinguishing factors in *Re Welsh* are: His Worship reduced a fine, but did not dismiss the charge; the Panel found that there was "no element of corruption implied or expressed in (his) actions" (see para 84); at his trial, the Crown Attorney submitted that his actions were at the lower end of the scale and joined in a submission for an absolute discharge; and, there was strong testimonial evidence both in writing and in person that led the Panel to conclude that the public's confidence would not be undermined by Justice of the Peace Welsh continuing in office (see para 84).

[30] We have also considered whether the principles set out in *R. v Gladue* [1999] 1 S.C.R. 688 and *R. v Ipeelee* 2012 S.C.C 13 have any application to this hearing. We are prepared to accept that the principles do have application. It is clear from the jurisprudence that it is not a mitigating factor to be Aboriginal. What must be considered are: (a) the unique systemic or background factors which may have played a part

in bringing the particular Aboriginal offender *before* the courts; and (b) the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular Aboriginal heritage or connection.

[31] While it is clear that Her Worship is Aboriginal, we find no connection which would engage the principles to lead us to any other disposition. Justice of the Peace Phillips had been a justice of the peace for over twenty years at the time of this incident. All judicial officers know they may be faced with the dilemma of supporting a family member or a friend at the cost of their judicial integrity. It is a dilemma that all judicial officers hope to confront only in the abstract, in the seminar room during judicial education, as opposed to in real life.

[32] At the end of the day, all judicial officers know what they have to do: their integrity and their obligation to the administration of justice have to come first. It is the only way that their personal integrity can be maintained, and more importantly it is the only way that public confidence in the administration of justice can be maintained. The Hearing Panel finds that the only sanction which will restore public confidence is to recommend to the Attorney General, pursuant to section 11.1(10)(g), that Her Worship Donna Phillips be removed from office on the basis that she has become incapacitated from the due execution of her office by reason of conduct that is incompatible with the due execution of her office.

Date: October 24, 2013

HEARING PANEL:

The Honourable Justice Paul M. Taylor, Chair

Regional Senior Justice of the Peace Kathleen Bryant

Ms. Cherie Daniel, Community Member

APPENDIX "A"

COPY OF EXHIBIT ONE IN THE HEARING – NOTICE OF HEARING

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The Justices of the Peace Review Council (the "Review Council"), pursuant to subsection 11(15)(c) of the *Justices of the Peace Act*, R.S.O. 1990, c. J.4, as amended (the "*Act*"), has ordered that the following matter of a complaint regarding the conduct or actions of Justice of the Peace Donna Phillips be referred to a Hearing Panel of the Review Council, for a formal hearing under section 11.1 of the *Act*.

It is alleged that you have conducted yourself in a manner that is incompatible with the due execution of your office and that by reason thereof you have become incapacitated or disabled from the due execution of your office. The particulars of the complaint regarding your conduct are set out in Appendix "A" to this Notice of Hearing.

The Hearing Panel of the Review Council will convene at the Justices of the Peace Review Council Boardroom, Suite 2310, 1 Queen Street East, in the City of Toronto, on Friday, the 15th day of February, 2013, at 9:00 a.m. in the forenoon or as soon thereafter as the Hearing Panel of the Review Council can be convened to set a date for the hearing into the complaint.

A justice of the peace whose conduct is the subject of a formal hearing before the Review Council may be represented by counsel and shall be given the opportunity to be heard and to produce evidence.

The Review Council may, pursuant to subsection 11.1(10) of the *Justices of the Peace Act,* dismiss the complaint after completing the hearing, with or without a finding that it is unfounded or, if it upholds the complaint, it may:

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Public Hearing Re:
Her Worship Donna Phillips

(h) warn the justice of the peace;

(i) reprimand the justice of the peace;

(j) order the justice of the peace to apologize to the complainants or to any other person;

(k) order that the justice of the peace take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;

(l) suspend the justice of the peace with pay, for any period;

(m) suspend the justice of the peace without pay, but with benefits, for a period up to 30 days; or

(n) recommend to the Attorney General that the justice of the peace be removed from office in accordance with section 11.2 of the *Justices of the Peace Act*.

You, your counsel or your representative may contact the office of Ms. Marie Henein, Henein and Associates, the solicitor retained on behalf of the Review Council to act as Presenting Counsel in this matter.

If you fail to attend before the Review Council in person or by representative, the Review Council may proceed with the hearing in your absence and you will not be entitled to any further notice of the proceeding.

January 17, 2013 — Original signed

Marilyn E. King
Marilyn E. King
Registrar
Justices of the Peace Review Council

To: Justice of the Peace Donna Phillips
c. Mr. Timothy Price, Counsel for Her Worship

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APPENDIX "A"

PARTICULARS OF THE COMPLAINT

The particulars of the complaint regarding the conduct of Her Worship Phillips are set out below:

1. On March 30, 2012, you were in your vehicle as a passenger. Your daughter, Mary Anne Kechego was driving the vehicle and was stopped by the police for a traffic infraction. In the course of that investigation, you misled the police officer as to the identity of Ms. Kechego and your relationship with her, and were a complicit witness to Ms. Kechego misleading the officer;

2. Upon stopping the vehicle, the investigating police officer, Staff Sergeant Berg, attempted to obtain the identification (name and birth date) of the driver as well as the driver's licence. During the course of this investigation, Ms. Kechego falsely identified herself as Kelly Titchner and provided a date of birth. You were present during Ms. Kechego's initial conversation with the police officer which occurred when Ms. Kechego was seated in the car and your were in the passenger seat;

3. Staff Sergeant Berg ran the name and date of birth provided by Ms. Kechego through his computer. He was unable to locate the licence information that had been provided verbally by Ms. Kechego. He approached the vehicle again and asked Ms. Kechego for her name and birth date. She once again lied to the police officer and provided the same false identifying information. You were present in the passenger seat when this conversation occurred with your daughter;

4. The officer asked Ms. Kechego to step out of the car. He cautioned her about misleading him and advised that she could be charged with a criminal offence. Ms. Kechego once again maintained the false identification was her true identity and informed the officer that you were a justice of the peace and her aunt and could confirm her identity;

5. Staff Sergeant Berg then spoke to you and asked you to verify the identity of the driver. You falsely confirmed that Ms. Kechego was Kelly Tichner and further falsely confirmed that she was your niece;

6. Staff Sergeant Berg was not satisfied with the identification information. Ms. Kechego claimed that she could not produce her driver's licence because she had left it in a storage unit. The police officer told Ms. Kechego that he would follow her to the storage unit to retrieve the driver's licence. Further, he told Ms. Kechego in your presence that he would take her word that she was licenced, especially since this was supported by you;

7. You and Ms. Kechego drove to the storage facility together. At no time did you seek to correct the misinformation that you had provided to Staff Sergeant Berg regarding the identity of the driver and her relationship to you. Further, at no time did you correct the misinformation that you had witnessed your daughter provide to Staff Sergeant Berg;

8. At the storage facility, the owner confirmed that the driver did not have a rented storage unit nor did her friend. The officer once again spoke to you while you were sitting in the car and advised that he was certain that the driver was lying to him. He reminded you that you were a justice of the peace and needed to answer truthfully to him. He then asked you how well you knew the driver and you said not well;

9. Staff Sergeant Berg asked you to tell the driver that she needed to truthfully identify herself. You asked the officer to have an opportunity to speak to the driver and did so. After you spoke to Ms. Kechego, she admitted her true identity;

10. Ms. Kechego was in fact a suspended driver at the time of this incident and there were warrants outstanding for her arrest;

11. You did act inappropriately in misleading a police officer conducting an investigation as to the identity of your daughter, Ms. Kechego and/or your relationship to her, and were a complicit witness to Ms. Kechego misleading the officer; and,

12. The act or acts as set out in paragraphs 1 to 11, inclusive constitute judicial misconduct that warrant a disposition under section 11.1(10) of the *Justices of the Peace Act*.

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JUSTICES OF THE PEACE REVIEW COUNCIL

IN THE MATTER OF A HEARING UNDER SECTION 11.1 OF THE JUSTICES OF THE PEACE ACT, R.S.O. 1990, C. J.4, AS AMENDED

Concerning a Complaint about the Conduct of Justice of the Peace Donna Phillips

Before: The Honourable Justice Paul M. Taylor, Chair
Regional Senior Justice of the Peace Kathleen Bryant
Ms. Cherie Daniel, Community Member

Hearing Panel of the Justices of the Peace Review Council

RULING ON APPLICATION FOR COMPENSATION

Counsel:

Ms. Marie Henein Henein, Hutchison LLP	Mr. Tim Price Little, Inglis, Price & Ewer LLP
Presenting Counsel	Counsel for Her Worship Donna Phillips

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Public Hearing Re:
Her Worship Donna Phillips

INTRODUCTION

[33] As a result of a complaint made to the Justices of the Peace Review Council, a complaints committee of the Council investigated the allegations and directed that a formal hearing be held pursuant to Section 11.1 of the *Justice of the Peace Act* concerning the actions of Justice of the Peace Donna Phillips. Evidence was heard on May 23 and 24, 2013. Submissions were made on June 20, 2013. Justice of the Peace Phillips, through her counsel, agreed that if the particulars of the complaint were found to be true, they would amount to judicial misconduct. On July 30, 2013, we found that Justice of the Peace Phillips had actively misled Staff Sergeant William Berg of the London Police Service, who was investigating Her Worship's daughter, Mary Anne Kechego, in relation to an alleged violation of the *Highway Traffic Act*.

We found that Her Worship was an incredible witness and, found that Her Worship:

(4) claimed that she did not know the driver well;

(5) claimed that the driver was her niece; and,

(6) confirmed that the driver was named Titchner, which she knew to be false.

Our findings led us to a conclusion that Her Worship's actions constituted judicial misconduct.

[34] We found, on October 24, 2013, that the only appropriate disposition was to recommend, pursuant to section 11.1(10)(g) of the *Justices of the Peace Act*, that Justice of the Peace Phillips be removed from office. Her conduct in misleading Staff Sergeant Berg was so manifestly and profoundly destructive of the concept of the impartiality, integrity, and independence of the judicial role, that public confidence would be sufficiently undermined so as to render her incapable of executing the judicial office. (See the Canadian Judicial Council's *Report to the Minister of Justice Concerning Mr.Justice Paul Cosgrove of the Superior Court of Ontario* (2009 at para. 19).

After our decision was delivered at the hearing, Justice of the Peace Phillips, through her counsel, requested that we recommend to the Attorney General, pursuant to section 11.1(17) of the *Justices of the Peace Act,* that she be compensated for all or part of her legal services rendered in connection with the hearing. After hearing the submissions of Her Worship's counsel and Presenting Counsel, we reserved on our decision and advised that we would issue written reasons within 30 days. After the proceeding on that date, the Panel was informed by the Registrar that Justice of the Peace Phillips tendered a letter of retirement to the Chief Justice of the Ontario Court of Justice, indicating that she was retiring immediately. A recommendation for and payment of costs, unlike the dispositions under section 11.1 (10), do not require the justice of the peace to be in office for the decision to be implemented. The Panel has the authority to proceed with consideration of the request for the recommendation of compensation.

THE SUBMISSIONS OF THE PARTIES

[35] Mr. Price, who has acted for Her Worship throughout the hearing, submitted, with the candour that he exhibited throughout the proceedings, that the prevailing jurisprudence was against a recommendation for compensation. He did, however, make two submissions with respect to how we might approach our task. The first was that other decisions of the Justice of the Peace Review Council are not binding on this Panel; the second was that extraordinary circumstances exist is this case. The extraordinary circumstance is that an extra hearing day was necessary due to the sudden and unexpected illness of one of the members of the Panel.

[36] Ms. Henein appeared before us as Presenting Counsel. Her role is analogous to that of *amicus curiae.* In accordance with the JPRC Procedures, her role is to operate independently of the Panel and assist the Panel by presenting the case against Her Worship so that the complaint is evaluated fairly and dispassionately to the end of achieving a just result. Presenting Counsel's duty is not to seek a particular disposition. Ms. Henein pointed to the prevailing jurisprudence, and in particular the recent decision of the Hearing Panel in *Re: Foulds (2013, JPRC).*

ANALYSIS OF THE APPLICABLE LEGAL PRINCIPLES

[37] It is relatively well settled that when a judicial officer is compelled to bring an action on the basis that the judiciary's collective independence is being threatened, the individual jurist or jurists should be awarded some, or in an appropriate case, all of their costs (see *Reilly v Alberta* (Provincial Court, Chief Justice), [1999] A.J. No. 958 at paras. 34-36; *Mackin v. New Brunswick* (Minister of Finance), [1998] N.B.J. No. 267 at paras. 63-67, and [2002] S.C.J. No. 13 at paras 86-87.)

[38] When a jurist is forced to defend an allegation of judicial misconduct, and he or she is exonerated, elemental fairness as well as the preservation of judicial independence mandates compensation. In this regard, two decisions of the Quebec Superior Court must be approached with caution. In *Ruffo c. Quebec (ministre de la justice)* [1997] J.Q. No. 3658, Justice Ruffo sought a declaration that her legal costs be defrayed by the Minister of Justice. The minister opposed. Justice Barakett ruled that Justice Ruffo should be compensated, that she had an obligation to respond and that her obligation was integral to the concept of judicial independence, (see paras. 48-60). A similar application was brought in *Hamann c Quebec (ministre de la justice)*, 1998 R.J.Q. 254. Justice Hamann, who was a per diem or part-time judge, brought an application for a direction that his legal fees to defend an allegation of judicial misconduct should be paid by the Province. Again, as in *Ruffo, supra*, the Minister opposed. Justice Dutil, relying on *Ruffo*, ruled that Justice Hamann should be compensated, (see paras. 19-21). She did, however, appear to leave open whether compensation could be refused where there was a finding of misconduct, (see para. 25).

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[39] In Re: *Foulds*, supra, a Hearing Panel of the Review Council decided that different considerations apply when there has been a finding of judicial misconduct. The Panel wrote, at paras. 51-62:

> 51. "The awarding of costs in judicial misconduct proceedings has lacked consistency and there is no case law that directly addresses the approach to be taken by a Panel in making a recommendation.
>
> 52. While addressing the issue of costs in the matter before us, we aim to also provide some general guidelines.

53. Certainly respondents to these hearings should be encouraged to retain counsel.

54. In this case, counsel assisted with the preparation of an Agreed Statement of Facts, a feat that might not otherwise be accomplished without the benefit of counsel. That alone saved considerable public expenditure.

55. The participation of counsel also insulates complainants and other witnesses from cross-examination by the very respondent about whom they complained, thereby amplifying procedural fairness and the overall dignity of the process.

56. Although judicial members of a Panel are screened for any personal or professional connection to a respondent, the addition of counsel for a respondent avoids the unseemliness of a judicial officer directly pleading his case to his peers.

57. In instances where the alleged misconduct is referred to a public hearing, and ultimately dismissed, there is a very compelling argument for the recovery of all costs (in accordance with sub-sections 11.1 (17) and 11.1 (18) of the *Act*) as the public's confidence has not been undermined in the least.

58. In cases where, pursuant to subsection 11.10 (g), a recommendation to the Attorney General is made that a justice of the peace be removed from office, we doubt whether costs should ever be recommended, except in the most unusual of circumstances.

59. When a Panel recommends removal from office, it means that nothing short of removal is 'enough' to restore the public's confidence. That very public would unlikely countenance the awarding of costs for such extreme misconduct.

60. In other cases where there is a finding of misconduct, there is a spectrum of cost recommendations that might arise, all subject to the limitations in subsections 11.1 (17) and 11.1 (18) of the *Act*.

61. In cases where no misconduct is admitted, but where it is eventually established by the Panel, then costs might still be warranted but on a lower scale.

62. Some factors that might be weighed are these:

    a) the severity of the misconduct;

    b) the complexity of the hearing;

    c) the conduct of the justice of the peace in the course of the hearing, including whether the justice of the peace prolonged or expedited the process;

    d) the nature of the disposition(s);

    e) whether public funds were lost as a result of the misconduct;

    f) whether there had been previous findings of misconduct made against the justice of the peace; and,

    g) whether the conduct in question relates to a judicial function or impacts judicial independence.

APPLICATION OF THE PRINCIPLES TO THIS HEARING

[40] At the outset, we note that we are not ruling on the competence of Justice of the Peace Phillips' counsel or whether he should be compensated. He performed admirably and with great skill in a difficult case. He should be compensated, and this should be done, as would normally be the case by his client. She has both a moral and legal obligation to him.

[41] Our task is narrower: should we recommend to the Attorney General that compensation be awarded to Justice of the Peace Phillips?

[42] All of the factors militate against such a recommendation. The misconduct was severe, and we determined that the only way that public confidence in the

administration of justice could be restored was to recommend removal from office. Justice of the Peace Phillips created this situation by her misconduct; she was ultimately removed from office because of her misconduct. We have considered the submission that due to the illness of one of our Panel members extraordinary circumstances exist. Our review of the transcript reveals that the hearing was going to be adjourned in any event. On the return date, either a further witness would be called and then submissions as to whether judicial misconduct had occurred would proceed; or, the witness would not be called and counsel would proceed directly to submissions. Under either scenario, an adjournment would have been needed to permit counsel to prepare arguments and case law prior to making their submissions on the evidence.

[43] We are of the firm view that the average reasonable Canadian fully apprised of all the facts would be shocked if any compensation were awarded. The Panel's decision is that no recommendation will be made to the Attorney General for compensation.

Date: November 4, 2013

HEARING PANEL:

The Honourable Justice Paul M. Taylor, Chair

Regional Senior Justice of the Peace Kathleen Bryant

Ms. Cherie Daniel, Community Member

APPENDIX E

HEARING RE: JUSTICE OF THE PEACE TOM L. FOULDS

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JUSTICES OF THE PEACE REVIEW COUNCIL

IN THE MATTER OF A HEARING UNDER SECTION 11.1 OF THE JUSTICES OF THE PEACE ACT, R.S.O. 1990, C. J.4, AS AMENDED

Concerning a Complaint about the Conduct of Justice of the Peace Tom L. Foulds

Before: The Honourable Justice P. H. Marjoh Agro, Chair
Regional Senior Justice of the Peace Bruce Leaman
Dr. Emir Crowne, Community Member

Hearing Panel of the Justices of the Peace Review Council

REASONS FOR DECISION

Counsel:

Ms. Marie Henein Henein Hutchison, LLP	Mr. Brian Greenspan Greenspan Humphrey Lavine
Presenting Counsel	Counsel for His Worship Tom L. Foulds

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APPENDIX E

Public Hearing Re: His Worship Tom L. Foulds

INTRODUCTION

[1] The Justices of the Peace Review Council, pursuant to Section 11(15)(c) of the *Justices of the Peace Act*, R.S.O.1990, c. J. 4, as amended ("the *Act*"), ordered that a complaint regarding the conduct of Justice of the Peace Tom Foulds be referred to a Hearing Panel of the Review Council, for a formal hearing under Section 11.1 of the *Act*.

[2] His Worship Foulds was appointed as a justice of the peace on July 12, 1999.

[3] Prior to the incident that is the subject of this hearing, and thereafter, His Worship presided at Old City Hall Courthouse in downtown Toronto.

[4] The Notice of Hearing, dated March 26, 2013, particularizes the complaint against His Worship and is appended to these reasons as Exhibit 1. The essence of the complaint is that on Saturday, April 28, 2012, His Worship Foulds acted inappropriately when he attempted to influence the course of an investigation that was being undertaken by Public Health inspectors of the City of Toronto pursuant to their duties under the *Health Protection and Promotion Act*, R.S.O. 1990, c. H7.

[5] The object of the inspection was a local restaurant owned and operated by a friend of Justice of the Peace Foulds.

[6] The Panel heard submissions from his counsel that since this incident, His Worship continues to preside there, including over matters of the type of legislation with which he was complained to have interfered.

[7] Three days were set aside for the hearing.

[8] At the opening of the hearing on July 22, 2013, an Agreed Statement of Facts, signed by His Worship and his counsel and by Presenting Counsel, was tendered and filed as Exhibit 2 in these proceedings. The content of that agreement is also appended to these reasons.

[9] At para. 25 of that Statement, His Worship admitted that his actions as particularized therein constituted judicial misconduct.

[10] This Panel accepts that the Agreed Statement of Facts supports such a finding.

[11] There is, therefore, no threshold inquiry that needs to take place concerning the impugned conduct. The necessity of a lengthy hearing has been obviated.

APPLICABLE APPROACH TO DISPOSITION

[12] A finding of misconduct can lead to the imposition of any one of, or combination of, the range of statutorily prescribed dispositions: subsections 11.1(10) and (11) of the *Act*.

[13] Ranging from least to most serious, the Panel may,

a) warn the justice of the peace;

b) reprimand the justice of the peace;

c) order the justice of the peace to apologize to the complainant or to any other person;

d) order that the justice of the peace take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;

e) suspend the justice of the peace with pay, for any period;

f) suspend the justice of the peace without pay, but with benefits, for a period up to 30 days; or

g) recommend to the Attorney General that the justice of the peace be removed from office in accordance with section 11.2.

[14] The approach to be taken is described by the Honourable Justice Dennis O'Connor *In the Matter of a Complaint Respecting The Honourable Madam Justice Lesley M. Baldwin*, (OJC, 2002)[3]:

> The purpose of judicial misconduct proceedings is essentially remedial. The dispositions in s. 51.6(11) should be invoked, when necessary in order to restore a loss of public confidence arising from the judicial conduct in issue.

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[3] May 2, 2002, at pgs. 6-7.

> Paraphrasing the test set out by the Supreme Court in *Therrien*[4] and *Moreau-Bérubé*[5], the question under s. 51.6(11) is whether the impugned conduct is so seriously contrary to the impartiality, integrity and independence of the judiciary that it has undermined the public's confidence in the ability of the judge to perform the duties of office or in the administration of justice generally and that it is necessary for the Judicial Council to make one of the dispositions referred to in the section in order to restore that confidence.
>
> It is only when the conduct complained of crosses this threshold that the range of dispositions in s. 56.6(7) is to be considered. Once it is determined that a disposition under s. 56.6(11) is required, the Council should first consider the least serious - a warning - and move sequentially to the most serious - a recommendation for removal - and order only what is necessary to restore the public confidence in the judge and in the administration of justice generally.

[15] While Justice O'Connor was referencing the legislation pertaining to misconduct hearings for judges, his comments are equally applicable to hearings under the *Justices of the Peace Act*.

[16] As the Supreme Court of Canada noted in *Therrien (Re)*, 2001 SCC 35 at paras. 110 and 111:

> 110. ... the personal qualities, conduct and image that a judge projects affect those of the judicial system as a whole and, therefore, the confidence that the public places in it. Maintaining confidence on the part of the public in its justice system ensures its effectiveness and proper functioning. But beyond that, public confidence promotes the general welfare and social peace by maintaining the rule of law. In a paper written for its members, the Canadian Judicial Council explains:
>
> Public confidence in and respect for the judiciary are essential to an effective judicial system and, ultimately, to democracy founded on the

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[4] 2001 SCC 35.

[5] 2002 SCC 11.

> rule of law. Many factors, including unfair or uninformed criticism, or simple misunderstanding of the judicial role, can adversely influence public confidence in and respect for the judiciary. Another factor which is capable of undermining public respect and confidence is any conduct of judges, in and out of court, demonstrating a lack of integrity. Judges should, therefore, strive to conduct themselves in a way that will sustain and contribute to public respect and confidence in their integrity, impartiality, and good judgment.
>
> (Canadian Judicial Council, *Ethical Principles for Judges* (1998), p. 14)
>
> 111. The public will therefore demand virtually irreproachable conduct from anyone performing a judicial function. It will at least demand that they give the appearance of that kind of conduct. They must be and must give the appearance of being an example of impartiality, independence and integrity. What is demanded of them is something far above what is demanded of their fellow citizens.

AGGRAVATING FACTORS

[17] The Panel is of the view that several decisions taken by His Worship Foulds on April 28, 2012 at the restaurant owned by a long-time friend were ill-advised and constitute aggravating circumstances.

[18] Rather than realizing the compromising position in which he had placed himself and absenting himself when the inspectors arrived that night, he joined the owner and the two inspectors in the kitchen and set upon a course of action demonstrative of a severe error in judgment not befitting an experienced judicial officer.

[19] His Worship had the option either to leave the restaurant when the inspectors arrived, or at least remain unobtrusively in the bar area of the establishment. Instead, by taking the inspection report from the owner's hand, and commenting that he was very familiar with that form, he put forward an equivocation that blurred the line between his presence being purely private in nature, to one which traversed the personal/professional divide.

[20] Justice of the Peace Foulds personalized his plea by saying he would be attending a major function at the restaurant to which he would be bringing friends and colleagues and he did not want them to see the sign relating to the previous inspection.

[21] We find this to be an egregious interference with the independent and impartial exercise of a regulatory duty by two public officials, striking at the heart of their function and severely impugning His Worship's own integrity and that of the administration of justice that he is sworn to serve.

[22] We conclude that this conduct is worthy of sanction.

MITIGATING FACTORS

[23] Chief among the aspects in His Worship's favour in this proceeding is his acknowledgment of misconduct.

[24] By so doing, and by agreeing to a set of facts sufficient to support such an admission, considerable cost and time that would have been necessary to hear witnesses on this issue, were saved. Specifically, further public funds which would have been spent to enable the two inspectors to attend to testify at this hearing, were avoided.

[25] Secondly, perhaps in anticipation of one of this Panel's possible dispositions, His Worship has sent letters of apology to both inspectors. This reflects his remorse in his engaging in a course of action that was unbefitting his position as a justice of the peace.

[26] Thirdly, His Worship Foulds comes before this Panel without a history of findings of judicial misconduct after 14 years as a justice of the peace.

[27] His community service before appointment and his current service as a Canadian Armed Forces reservist speak to his otherwise exemplary character.

DISPOSITION

[28] Having determined that the misconduct is worthy of sanction, the Panel's focus must be remedial and relate to the judiciary rather than the specific justice of the peace: *In the Matter of a Complaint Respecting Justice of the Peace Jorge Barroilhet,*

October 15, 2009 at para. 10, citing with approval *Ruffo v Conseil de la Magistrature*, [1995] 4 S.C.R. 267:

> ... As such, the role of the Hearing Panel in addressing judicial misconduct is not to punish the part, i.e. the individual justice of the peace who stands out by conduct that is deemed unacceptable but, rather to preserve the integrity of the whole, i.e. the entire judiciary itself.

[29] This is consistent with the view that the personal qualities and conduct of a judicial officer affect the judicial system as a whole and the confidence the public places in the institution and its members.

[30] Public confidence in the judicial system as a whole must be restored.

[31] In our view, neither a warning nor a reprimand would restore public confidence in the integrity of justices of the peace of the Ontario Court of Justice.

[32] We have found His Worship to have attempted to influence the regulatory duties of public officials whose employer, the City of Toronto, appears before him and other justices of the peace in this region as a litigant.

[33] The public must know, as a result of our disposition, that misconduct of this kind is not countenanced by the Ontario Court of Justice.

[34] In particular, City inspectors must have confidence that they can perform their duties independently and without fear of intimidation, direction or reprisal from judicial sources.

[35] His Worship has provided letters of apology to both involved inspectors. To order further apologies, in the circumstances, would be redundant.

[36] The possible option of ordering further education has, to some extent, already been dealt with. The Panel heard that His Worship Foulds, along with all justices of the peace, as recently as the spring of 2013, attended a continuing education seminar which included a component on ethics.

[37] One might reasonably infer this education session had some impact on HisWorship's decision, taken with the benefit of counsel, to acknowledge his misconduct.

[38] The Panel is therefore of the view that no further specific education in this area is necessary, though His Worship is encouraged to avail himself of similar continuing education as it might arise.

[39] Remaining dispositions include suspensions (with and without pay), or a recommendation to the Attorney General that His Worship be removed from office.

[40] We will deal with removal first. In our view, removal from office is best suited to the most grave cases of misconduct where no other disposition, or combination of dispositions, would meaningfully restore public confidence in the administration of justice.

[41] That is not the case here.

[42] Because of the seriousness of the misconduct demonstrated by His Worship Foulds, and mindful of the appearance of that conduct in the eyes of the public, this Panel has unanimously concluded that the appropriate disposition in this case is a period of suspension.

[43] It is our view that a suspension with pay in this case would be perceived as an insufficient method to redress public confidence. Such suspensions, when routinely imposed on other persons whose job it is to uphold the laws of the land, are often viewed as paid leave and tend to further undermine public confidence.

[44] Counsel for His Worship acknowledged that over the course of this complaint process, Justice of the Peace Foulds continued his presiding duties at Old City Hall, which duties would include matters in which the City of Toronto was a litigant.

[45] It is our view that the only sanction which will restore the public confidence in both this justice of the peace and that bench as a whole, is to suspend His Worship Foulds without pay, but with benefits, for a period of seven consecutive calendar days commencing Monday, the 9th day of September 2013.

COSTS

[46] Mr. Greenspan, counsel for His Worship, made application for a recommendation for costs. He argued that with the assistance and benefit of counsel, an Agreed Statement of Facts was tendered thereby abridging this hearing from three days to

one half day and sparing the attendance of witnesses and the costs related to that attendance.

[47] Mr. Greenspan provided the Panel a docket itemizing his work and time spent on this matter as well as the work and time spent by his junior associate. The time attributed to Mr. Greenspan is 15.1 hours and to his associate 11.2 hours.

[48] Subsection 11.1(17) of the *Act* permits this Panel to compensate a justice of the peace for all or part of costs incurred in a proceeding under the *Act*:

> (17) The Panel may recommend that the justice of the peace be compensated for all or part of the cost of legal services incurred in connection with the hearing.

[49] The quantum of allowable costs is limited to "a rate for legal services that does not exceed the maximum rate normally paid by the government of Ontario for similar services": subsection 11.1 (18) of the *Act*.

[50] This provision is unusual in the professional disciplinary process.

[51] The awarding of costs in judicial misconduct proceedings has lacked consistency and there is no case law that directly addresses the approach to be taken by a Panel in making a recommendation.

[52] While addressing the issue of costs in the matter before us, we aim to also provide some general guidelines.

[53] Certainly respondents to these hearings should be encouraged to retain counsel.

[54] In this case, counsel assisted with the preparation of an Agreed Statement of Facts, a feat that might not otherwise be accomplished without the benefit of counsel. That alone saved considerable public expenditure.

[55] The participation of counsel also insulates complainants and other witnesses from cross-examination by the very respondent about whom they complained, thereby amplifying procedural fairness and the overall dignity of the process.

[56] Although judicial members of a Panel are screened for any personal or professional connection to a respondent, the addition of counsel for a respondent avoids the unseemliness of a judicial officer directly pleading his case to his peers.

[57] In instances where the alleged misconduct is referred to a public hearing, and ultimately dismissed, there is a very compelling argument for the recovery of all costs (in accordance with sub-sections 11.1 (17) and 11.1 (18) of the *Act*) as the public's confidence has not been undermined in the least.

[58] In cases where, pursuant to subsection 11.10 (g), a recommendation to the Attorney General is made that a justice of the peace be removed from office, we doubt whether costs should ever be recommended, except in the most unusual of circumstances

[59] When a Panel recommends removal from office it means that nothing short of removal is 'enough' to restore the public's confidence. That very public would unlikely countenance the awarding of costs for such extreme misconduct.

[60] In other cases where there is a finding of misconduct, there is a spectrum of cost recommendations that might arise, all subject to the limitations in subsections 11.1 (17) and 11.1 (18) of the *Act*.

[61] In cases where no misconduct is admitted, but where it is eventually established by the Panel, then costs might still be warranted but on a lower scale.

[62] Some factors that might be weighed are these:

a) the severity of the misconduct;

b) the complexity of the hearing;

c) the conduct of the justice of the peace in the course of the hearing, including whether the justice of the peace prolonged or expedited the process;

d) the nature of the disposition(s);

e) whether public funds were lost as a result of the misconduct;

f) whether there had been previous findings of misconduct made against the justice of the peace; and

g) whether the conduct in question relates to a judicial function or impacts judicial independence.

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[63] In *Reilly v Alberta*, 1999 ABQB 252, at paras. 30-32, aff'd by 2000 ABCA 241, the court held that:

> Where the conduct in question relates to the judicial function...the state should defray the legal fees required for the judge to defend himself or herself in order to preserve the independence of the judiciary.

[64] These guidelines would serve the public interest by ensuring that its judicial officers are fairly and adequately represented, but not at the cost of the administration of justice as a whole.

[65] In this case, where there is an Agreed Statement of Facts and an admission of judicial misconduct, there is some measure of public good that is attached to the timely and efficient resolution of this complaint.

[66] For these reasons we recommend that costs be awarded to His Worship for the preparation of the Agreed Statement of Facts and hearing attendances, assessed at 10 hours, apportioned between Mr. Greenspan and his associate, and fixed in the sum of $3000.

DATED at the City of Toronto in the Province of Ontario this 24th day of July, 2013.

HEARING PANEL:

The Honourable Justice P. H. Marjoh Agro, Chair

Regional Senior Justice of the Peace Bruce Leaman

Dr. Emir Crowne, Community Member

EXHIBIT "1"

JUSTICES OF THE PEACE REVIEW COUNCIL

IN THE MATTER OF a complaint respecting
Justice of the Peace Tom Foulds
Justice of the Peace in the
Toronto Region

NOTICE OF HEARING

The Justices of the Peace Review Council (the "Review Council"), pursuant to subsection 11(15)(c) of the *Justices of the Peace Act*, R.S.O. 1990, c. J.4, as amended (the "*Act*"), has ordered that the following matter of a complaint regarding the conduct or actions of Justice of the Peace Tom Foulds be referred to a Hearing Panel of the Review Council, for a formal hearing under section 11.1 of the *Act*.

It is alleged that you have conducted yourself in a manner that is incompatible with the due execution of your office and that by reason thereof you have become incapacitated or disabled from the due execution of your office. The particulars of the complaint regarding your conduct are set out in Appendix "A" to this Notice of Hearing.

The Hearing Panel of the Review Council will convene at the Justices of the Peace Review Council Boardroom, Suite 2310, 1 Queen Street East, in the City of Toronto, on Wednesday, the 17th day of April, 2013, at 2 p.m. in the afternoon or as soon thereafter as the Hearing Panel of the Review Council can be convened to set a date for the hearing into the complaint.

> A justice of the peace whose conduct is the subject of a formal hearing before the Review Council may be represented by counsel and shall be given the opportunity to be heard and to produce evidence.

The Review Council may, pursuant to subsection 11.1(10) of the *Justices of the Peace Act,* dismiss the complaint after completing the hearing, with or without a finding that it is unfounded or, if it upholds the complaint, it may:

(a) warn the justice of the peace;

(b) reprimand the justice of the peace;

(c) order the justice of the peace to apologize to the complainants or to any other person;

(d) order that the justice of the peace take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;

(e) suspend the justice of the peace with pay, for any period;

(f) suspend the justice of the peace without pay, but with benefits, for a period up to 30 days; or

(g) recommend to the Attorney General that the justice of the peace be removed from office in accordance with section 11.2 of the *Justices of the Peace Act*.

You or your counsel may contact the office of Ms. Marie Henein, Henein Hutchison LLP, the solicitor retained on behalf of the Review Council to act as Presenting Counsel in this matter.

If you fail to attend before the Review Council in person or by representative, the Review Council may proceed with the hearing in your absence and you will not be entitled to any further notice of the proceeding.

March 26, 2013

Original signed

Marilyn E. King
Registrar
Justices of the Peace Review Council

APPENDIX "A"

PARTICULARS OF THE COMPLAINT

The particulars of the complaint regarding the conduct of Your Worship are set out below:

1. On Friday, April 27, 2012, two Public Health Inspectors employed by Toronto Public Health inspected a restaurant at 1496 Yonge Street in Toronto to check for compliance with Ontario Food Premises Regulation 562/90, under the *Health Protection and Promotion Act,* R.S.O. 1990, Ch. H7. As a result of the inspection, the premises were closed due to their observance of a potential health hazard (i.e. sewage back-up) and an order for compliance and closure was issued. In accordance with the requirements of the policy and regulation, a red "CLOSED" Food Safety Inspection Notice was posted at the front entrance.

2. On Saturday, April 28, 2012, the two Public Health Inspectors contacted the restaurant owner and advised that they would be re-attending the premises to review the work done to date.

3. On that same evening, you attended the restaurant and learned that the restaurant had been closed by the Public Health Inspectors and that they would be attending for re-inspection that same evening.

4. You told the restaurant owner to keep you advised as to the status of the inspection and left the premises to attend another function.

5. You were contacted and received notice that the inspectors had called and were on their way. You waited some time and then returned to the restaurant.

6. When you arrived at the restaurant, you learned that the inspectors had not yet arrived and you remained in the restaurant.

7. As a justice of the peace whose responsibilities include presiding over offences under the *Health Protection and Promotion Act* in Toronto, you ought to have known that a Public Health Inspector for the City of Toronto might recognize you as a justice of the peace.

8. At approximately 8:45 p.m. the same two Public Health Inspectors re-attended the restaurant to confirm whether certain work had been done pursuant to the order. You were sitting at the bar with a wine glass.

9. The owner did not introduce you to the inspectors. The inspectors inspected the premises and found that the critical items which had resulted in the closure were corrected.

10. After the inspection, the inspectors went to the kitchen with the owner and completed a written report. Your Worship entered the kitchen. One of the inspectors recognized you to be a justice of the peace from the courthouse at Old City Hall; however, he did not know your name at the time.

11. Your Worship said you were there for translation. However, no translation was done. All conversation was in English.

12. After the written report was completed, Your Worship took the report, stating, "Let me see this." You started to read it and made comments on it. Your Worship also stated that you were very familiar with this. You said once the infractions were corrected, the inspectors should issue a "Pass" sign. When the inspector said that the owner now had a "Pass", Your Worship said that the owner should have a full proper pass, referring to the bottom portion of the notice that still showed the results of the previous inspection as "Closed" and the enforcement action taken. Your Worship said that the grievous infraction was corrected, which had nothing to do with the food, and that the restaurant owner should not have had the red "Closed" sign on his restaurant window or been closed in the first place.

13. The inspectors explained that the policy required that another compliance inspection which could not be done within 30 days. In accordance with City policy, the current notice would remain as it was.

14. Your Worship told the inspectors, "That doesn't sound fair" and informed them that there was a major LCBO function taking place on Monday evening and many of the important gastronomes in the City would be in attendance and many thousands of dollars of wine would be consumed. You said that you had friends coming and you didn't want them to see the sign that showed the history of closure. You also

stated that you didn't agree with the red "Closed" sign because the problem had nothing to do with food, and the restaurant owner had already lost $5,000.00 on Saturday night.

15. Your Worship then stated, "You don't have to answer right now."

16. The inspectors did not change the bottom portion of the notice that disclosed the previous inspection.

17. Your Worship's comments and conduct caused one of the Public Health Inspectors, who had recognized you as a justice of the peace, to feel intimidated and nervous. He perceived Your Worship to be advocating for the owner of the restaurant and trying to influence the inspectors to give him a clean record and to not disclose the closure history.

18. The Director of Healthy Environments for the City of Toronto submitted a complaint about Your Worship's conduct, indicating that Your Worship acted in an improper manner and that your conduct resulted in the Public Health Inspectors feeling uncomfortable and pressured to make changes (which they did not make) that were not in keeping with the Toronto Public Health, Healthy Environment Policy for the conduct of Food Premises Inspections. If the inspectors had complied with your request that the previous inspection results not be disclosed to the public, the disclosure requirements of the DineSafe Inspection and Disclosure System would have been contravened.

19. Your Worship acted inappropriately when you advanced your friend's interests and your own interests, or acted in a manner that gave the appearance that you were advancing your friend's interests and your own personal interests, to influence the course of action that was being undertaken in accordance with the laws to enforce health standards in relation to food safety by Public Health Inspectors of the City of Toronto.

20. The act or acts as set out in paragraphs 1 to 15, inclusive constitute judicial misconduct that warrants a disposition under section 11.1(10) of the *Justices of the Peace Act*.

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EXHIBIT "2"

JUSTICES OF THE PEACE REVIEW COUNCIL

IN THE MATTER OF a complaint respecting
Justice of the Peace Tom Foulds
Justice of the Peace in the
Toronto Region

AGREED STATEMENT OF FACTS

His Worship Tom Foulds, and Counsel for His Worship, Mr. Brian H. Greenspan, and Presenting Counsel, Ms. Marie Henein, agree as provided herein.

1. The *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* state that the justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office.
2. Public confidence in and respect for the judiciary are essential to an effective judicial system and, ultimately, to democracy founded on the rule of law. One factor which is capable of undermining public respect and confidence is the conduct of justices of the peace, in and out of court, that demonstrates a lack of integrity, independence or impartiality.
3. The public expects that justices of the peace must be and must give the appearance of being an example of impartiality, independence and integrity.
4. Justice of the Peace Tom Foulds, the subject of the complaint, is now and was at all times referred to in this document, a justice of the peace of the Ontario Court of Justice. His Worship Foulds has served in that capacity since July 12, 1999

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Public Hearing Re:
His Worship Tom L. Foulds

Events of April 27, 2012

5. On Friday, April 27, 2012, two Public Health Inspectors, Jeff Henderson and Marius Mihai, attended at a restaurant located at 1496 Yonge Street in Toronto to conduct a routine compliance inspection under the *Health Protection and Promotion Act*, R.S.O. 1990, ch. H7.

6. As a result of the inspection, the restaurant was ordered closed due to the observations of the inspectors of the existence of a health hazard. An order for compliance and closure was issued. As required by the regulations, a red "CLOSED" Food Safety Inspection Notice was posted at the restaurant's front entrance.

7. The owner requested that the inspectors return the following day as he wanted to re-open the restaurant at the earliest possible opportunity. The inspectors agreed to return to the restaurant the next day, Saturday, April 28, 2012, to view the work done to date.

8. On the evening of Saturday, April 28, 2012, Justice of the Peace Foulds attended at the restaurant and learned that the restaurant had been closed by the Public Health Inspectors and that they would be attending for re-inspection for re-inspection later that evening.

9. His Worship Foulds told the restaurant owner, who was a personal friend, that as the owner's primary language was French, he should obtain an interpreter in order to ensure that communication with the inspectors would be clear. His Worship Foulds also asked the owner to advise him of the status and outcome of the inspection.

10. Justice of the Peace Foulds was contacted by the owner and was advised that the inspectors had called and were on their way for re-inspection. His Worship waited some time, and in the belief that the inspection would have been completed and that the inspectors would no longer be present, he returned to the restaurant.

11. When Justice of the Peace Foulds re-attended at the restaurant, he learned that the inspectors had not yet arrived, but he remained at the restaurant.

12. At approximately 8:45 pm, the two Public Health Inspectors attended the restaurant. They observed two females in the bar area and a male, later identified as Justice of the Peace Foulds, sitting at the bar with a glass of wine.

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13. His Worship indicated to the inspectors that he was in attendance for the purpose of translation for the owner of the restaurant. In fact, no French language was spoken. All conversation was in English, including conversation between the restaurant owner and His Worship.

14. The health inspectors inspected the premises and concluded that the restaurant could be re-opened.

15. After the inspection, the inspectors went to the kitchen with the owner and completed a written report. Justice of the Peace Foulds also entered the kitchen. It was at this point in the brighter light of the kitchen that Inspector Henderson recognized His Worship as a justice of the peace from Old City Hall as he had appeared before him in court on prior public health inspection cases. The other inspector, Inspector Mihai, was under the impression that His Worship was the restaurant owner's lawyer.

16. The inspectors completed the report and provided it to the owner. Justice of the Peace Foulds took the report stating: Let me see this. While holding the report, he indicated that he was very familiar with this. Justice of the Peace Foulds started to read the report and comment on it. Inspector Henderson felt intimidated and nervous because he perceived that His Worship was making demands for them to do certain things.

17. His Worship said the Inspectors should return on Monday and issue a "Pass" sign. The inspector said that the restaurant was now being issued a "Pass". When the inspector said he had a "Pass" sign now, His Worship said words to the effect of "No, like a proper…a full pass." His Worship said that the bottom portion of the sign which would show previous inspection on April 27, 20012, closed, along with enforcement action taken should not be included on the sign. He said that because the sewage backup was corrected, that should not show.

18. He advised the inspectors that there was a major LCBO function taking place on Monday evening and that many important individuals would be in attendance and many thousands of dollars of wine would be purchased. He indicated that he was aware of this as he had purchased tickets and would be bringing friends and colleagues to the function and did not want them to see the sign. He also said he didn't agree with the sign because it had nothing to do with food, that the restaurant

owner had lost $5,000 on Saturday night and the sign would not be fair to him and he said words to the effect that: He's already lost enough, ok?

19. There was a long pause. After the pause, His Worship said words to the effect of, "You don't have to answer right now."

20. Mr. Mihai then responded saying they probably would not be able to count Monday as a re-inspection because the policy required that a re-inspection could not be done in less than 30 days.

21. The Health Inspectors did not change the notice that disclosed the results of the previous inspection.

22. The conduct of the Justice of the Peace Foulds caused the Public Health Inspector who recognized him as a justice of the peace to feel intimidated and nervous.

23. The inspectors' perception of the interaction was that the justice of the peace was advocating for the owner of the restaurant and trying to convince the inspectors to give him a clean record by not disclosing the closure history.

24. The Director of Healthy Environments for the City of Toronto submitted a complaint to the Justices of the Peace Review Council about His Worship's conduct, as set out above, indicating that His Worship's conduct resulted in the Public Health Inspectors feeling uncomfortable and pressured to make changes that were not in keeping with the Toronto Public Health, Healthy Environment Policy for the conduct of Food Premises Inspections.

Admissions

25. Justice of the Peace Foulds admits and the parties are prepared to proceed on the basis that his actions as contained in this Agreed Statement of Facts constitute judicial misconduct.

26. Justice of the Peace Foulds admits that as a justice of the peace whose responsibilities include presiding over offences under the *Health Protection and Promotion Act* in Toronto, he should have appreciated that a Public Health Inspector for the City of Toronto might recognize him as a justice of the peace.

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27. Justice of the Peace Foulds now appreciates and understands that his actions could have been perceived as an attempt to influence or interfere in the course of action being undertaken in accordance with the laws to enforce health standards in relation to food safety by Public Health Inspectors of the City of Toronto.

28. His Worship Foulds agrees that a disposition ordered by the Justices of the Peace Review Council must be sufficient to restore and preserve the dignity and integrity of the judicial position. The disposition should also seek to restore public confidence in His Worship Foulds' integrity and ability to carry out his duties as a justice of the peace.

29. His Worship agrees that he will provide letters of apology to the two inspectors, Jeff Henderson and Marius Mihai. He further agrees that his presence during the inspection and his intervention was inappropriate. He regrets that this personal concern for a friend compromised his judgment in the circumstances.

30. His Worship agrees that he will not repeat such conduct in the future, mindful of the potential harm that such conduct poses to public confidence in the integrity and impartiality of the judiciary and to the administration of justice.

Original Signed	*Original dated July 10, 2013*
Justice of the Peace Tom Foulds	Date
Original Signed	*Original dated July 10, 2013*
Brian H. Greenspan (Counsel for Justice of the Peace Foulds)	Date
Original Signed	*Original dated July 15, 2013*
Marie Henein (Presenting Counsel)	Date